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भारत का राजपत्र

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नई दिल्ली, शनिवार, अगस्त 15, 1992/धारण 24, 1914

NEW DELHI, SATURDAY, AUGUST 15, 1992/SRAVANA 24, 1914

इस भाग के भिन्न पृष्ठ वर्षया दी जाती है जिससे कि यह अलग संकलन के क्षम रूप रूप से सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (II)
PART II—Section 3—Sub-Section (II)

(रक्षा वंत्रावाको छोड़कर) भारत सरकार के मंत्रालयों द्वारा ग्राही किए गए तांत्रिक धारेश और अधिनुबंधाएं
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than
Ministry of Defence)

कानूनिक, लोक विकायत तथा वेशन मंत्रालय

(कानूनिक और प्रशिक्षण विभाग)

प्रादेश

नई दिल्ली, 4 अगस्त, 1992

का.प्रा. 2130 —केंद्रीय सरकार, दिल्ली विधेय निलित स्थान
अधिनियम, 1946 (1946 का 25) को धारा 6 के साथ पठाया, धारा 5
की उपलाग (1) द्वारा प्रदत्त शक्तियों का प्रयोग परन्तु हुए पूर्वी स्थेशन
मासाकृज, बम्बई शहर, महाराष्ट्र के अन्तर्गत रजिस्टर किए गए भारतीय
स 423/92 दिनांक 28-6-92 के बावजूद भारतीय दंड संकिंच (1860
का 45) की धारा 120 वी, 342, 365, 386, 225 बम्बई.पी.सी.,
धारा 2, 25 एवं 27 शास्त्र अधिनियम और 3, 4, 5, 6 यात्रावाही और
विधेयक क्रियाकलाप (नियारण) अधिनियम, 1987 के अन्तर्गत दण्डनीय
अपराधों और उक्त अपराधों और उन्हीं तथ्यों से उत्पन्न होने वाले वैसे
ही सम्बन्धीय के अनुक्रम में किए गए किन्हीं धार्य अपराधों के संबंध में
या उनसे रामबन प्रवर्त्तनों, दुष्प्रवर्त्तनों और पड़तावों के अन्तर्गत के जिए,
महाराष्ट्र शासन के पक्षीय एवं वी.ए. 1 (बो) टीईप्रार-0792/सीप्रार-
29 दिनांक 4-6-92 के तहत महाराष्ट्र सरकार की सहमति से विल्ली

विशेष निलित स्थान के सदस्यों की शक्तियों और अधिकारिता का
विस्तारण सम्मुखी महाराष्ट्र राज्य पर करती है।

[स 233/41/92-ए-०८०८-१-१]

बंद्र प्रकाश सिंह, उप सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCE &
PENSION

(Department of Personnel and Training)

ORDER

New Delhi, the 4th August, 1992

S.O. 2130.—In exercise of the powers conferred by sub-
Section (1) of Section 5, read with Section 6, of the Delhi
Special Police Establishment Act, 1946 (Act No. 25 of 1946),
the Central Government with the consent of the State Gov-
ernment of Maharashtra, Home Department (Special) vide
Notification No. SPL 1(B)/TER-0792/CR-29 dated 4th
August, 1992 hereby extends the powers and jurisdiction of
the members of the Delhi Special Police Establishment
to the whole of the State of Maharashtra for investigation of
offences punishable under Sections 120-B, 342, 365, 386, 225
IPC read with Sections 3, 25, 27 of Arms Act and u/s. 3, 4, 5
& 6 of the Terrorist and Disruptive Activities (Prevention)
Act, 1987 and attempts, abetments and conspiracies in relation

(3371)

to or in connection with the said offences and any other offence or offences committed in the course of the same transaction arising out of the same facts in regard to FIR No. 423/92 registered on 28-6-1992 at Police Station Santa Cruz, Bombay City (Maharashtra).

[No. 228/41/92-AVD-II]
C. P. SINGH, Dy. Secy.

आदेश

नई दिल्ली, 4 अगस्त, 1992

का.आ. 2131.—केन्द्रीय सरकार, दिल्ली विशेष पुलिस स्थापन अधिनियम 1946 (1946 का 25) की धारा 6 के आधार परिवर्तन, धारा 5 की उपधारा (1) धारा प्रदर्श अक्षियों का प्रयोग करते हुए पुलिस स्टेशन बेजालपुर, अहमदाबाद, गुजरात के अन्तर्गत रजिस्टर किए गए मालामा सं. 230/92 दिनांक 25-7-92 के बाबत भारतीय बंड संहिता (1860 का 45) की धारा 120 वी, 121, 122 आई.पी.सी., 25 आर्म्स एकट, 3 एवं 5 आतंकवादी और विद्युतक क्रियाकालाप (निवारण) अधिनियम, 1987 तथा विस्टोटक पदार्थ अधिनियम, 1908 (1908 का 6) की धारा 4 और धारा 5 और धारा 6 के अधीन दण्डनीय अपराधों और उन्नत अपराधों, और उन्हीं तर्भ्यों से उत्पन्न होने वाले वैसे ही संवेद्धार के अनुक्रम में किए गए किन्हीं गम्भीर अपराधों, के संबंध में या उनके संस्कृत प्रयोगों, बुल्डरणों और पड़वलों के प्रबन्धण के लिए, गुजरात शासन के दिनांक जीडी/92/143/एसबी-II/ठीडीए/1192/4951 दिनांक 31-7-92 के तहत गुजरात सरकार की सहमति से दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और अधिकारिता का विस्तारण सम्पूर्ण गुजरात राज्य पर करती है।

[संख्या 228/42/92-ए.वी.डी. II]
चान्द्रप्रकाश सिंह, उप सचिव

ORDER

New Delhi, the 4th August, 1992

S.O. 2131.—In exercise of the powers conferred by Sub-Section (1) of Section 5, read with Section 6, of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946) the Central Government, with the consent of the State Government of Gujarat, Home Department vide No. GG/92/143/SB. II/TDA/1192/4951, dated 31st July, 1992, hereby extends the powers and jurisdiction of the members of the Delhi Special Establishment to the whole of the State of Gujarat for investigation of the offences punishable under sections 120-B, 121, 122 of Indian Penal Code read with Arms Act 25(1), under sections 3 & 5 of Terrorist and Disruptive Activities (Prevention) Act and under Sections 4, 5 and 6 of the Explosive Substances Act and attempts, abettments and conspiracies in connection with the said offence and any other offence committed in the course of the same transaction arising out of the same facts in regard to FIR No. 230/92 registered on 25th July, 1992 at P. S. Vejalpur in Ahmedabad City (Gujarat).

[No. 228/42/92-AVD.II]
C. P. SINGH, Dy. Secy.

वित्त मंत्रालय

(राजस्व विभाग)

आदेश

नई दिल्ली, 4 अगस्त, 1992

का.आ. 2132.—भारत सरकार के संयुक्त सचिव ने, जिसे विदेशी मुद्रा संरक्षण और ताकरी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अधीन आदेश का.मं. 673/7/92-सी.ए.-8 दिनांक 1-1-92 को यह निर्देश देते हुए जारी किया था कि श्री बिहारीलाल गोपनका पुल स्व. श्री आर.एम. गोपन हा. ए.एच.-256, साल्ट लेक, मैन्टर-2, कलकत्ता-700091 को निरुद्ध कर लिया जाये और केन्द्रीय कारागार दम दम में अधिकारियों में रखा जाये ताकि उसे माल की नक्सही करने से रोका जा सके;

धारा 3 की उपधारा (1) के अधीन आदेश का.सं. 673/1/92-सी.ए. 8 दिनांक 1-1-92 को यह निर्देश होते हुए जारी किया था कि श्री एन. के. तुलसीयन पुल स्व. श्री बिहारीलाल बुलसियन, (1) 15 वी, विहारीलाल रोड, कलकत्ता-700029; (2) डल्टनगंग, थाना रोड, पलामू, बिहार को निरुद्ध कर लिया जाए और केन्द्रीय कारागार दम दम में अधिकारियों में रखा जाये ताकि उसे माल की नक्सही करने से रोका जा सके;

2. केन्द्रीय सरकार के पास यह विस्तार करने का कारण है कि पूर्वोक्त अक्षियों का विरोध हो रहा है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके।

3. अब भव, केन्द्रीय सरकार, उक्त अधिनियम, की धारा 7 की उपधारा (1) के खण्ड (ख) द्वारा प्रदत्त अक्षियों का प्रयोग करते हुए, यह निर्देश देती है कि पूर्वोक्त अक्षियों हर आदेश के शासकीय राजपत्र में प्रकाशन के 7 दिन के भीतर पुलिम आयुक्त, कलकत्ता के सचिव हाविर हों।

[का.मं. 673/1/92-सी.ए.-VIII]

रा. डैप्लोमा, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

ORDER

New Delhi, the 4th August, 1992

S.O. 2132.—Whereas the Joint Secretary to the Government of India, specially empowered under sub-section (i) of Section 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) issued under F. No. 673/1/92-Cus. VIII dated 1st January, 1992 under the said sub-section that Shri N. K. Tulasiyan, son of Late Shri Biharilal Tulasiyan, (i) 15B, Hindustan Road, Calcutta-29; (ii) Dultongunge, Thana Road, Palamou, Bihar be detained and kept in custody in the Dum Dum Central Jail, Calcutta with a view to preventing him from smuggling goods in future;

2. Whereas the Central Government has reasons to believe that the aforesaid person has absconded or is concealing himself so that the order cannot be executed;

3. Now, therefore, in exercise of the power conferred by clause (b) of sub-section (i) of Section 7 of the said Act, the Central Government hereby directs the aforesaid person to appear before the Commissioner of Police, Calcutta within 7 days of the publication of this order in the official Gazette.

[F. No. 673/1/92-Cus. VIII]

R. DESIKAN, Under Secy.

आदेश

नई दिल्ली, 4 अगस्त, 1992

का.आ. 2133.—भारत सरकार के संयुक्त सचिव ने, जिसे विदेशी मुद्रा संरक्षण और ताकरी निवारण अधिनियम, 1974 (1974 का 52) की धारा 3 की उपधारा (1) के अधीन आदेश का.मं. 673/7/92-सी.ए.-8 दिनांक 1-1-92 को यह निर्देश देते हुए जारी किया था कि श्री बिहारीलाल गोपनका पुल स्व. श्री आर.एम. गोपन हा. ए.एच.-256, साल्ट लेक, मैन्टर-2, कलकत्ता-700091 को निरुद्ध कर लिया जाये और केन्द्रीय कारागार दम दम में अधिकारियों में रखा जाये ताकि उसे माल की नक्सही करने से रोका जा सके;

2. केन्द्रीय सरकार के पास यह विस्तार करने का कारण है कि पूर्वोक्त अक्षियों का विरोध हो रहा है या अपने को छिपा रहा है जिससे उक्त आदेश का निष्पादन नहीं हो सके।

MINISTRY OF SURFACE TRANSPORT
(Transport Wing)

New Delhi, the 24th July, 1992

S.O. 2140.—Whereas Shri M. T. Sharma, appointed as a member of the Kandla Dock Labour Board representing the Dock Workers by the Notification of Government of India, Ministry of Surface Transport (Transport Wing) No. S.O. 358(E) dated 15th May, 1989, has resigned from membership of the said Board in his letter dated 23rd June, 1992;

Now, therefore, in pursuance of Rule 4 of the Dock Workers (Regulation of Employment) Rules, 1962 the Central Government hereby notifies the said vacancy.

[F. No. LB-13014/1/92-US(L)]
P. K. MISHRA, Under Secy.

सर्व भवानय

मई दिल्ली, 17 जून 1992

का.प्रा. 2141.—सीधोगिक विवाद अधिनियम, 1947 (1947 का 14) की द्वारा 17 के भासुरण में, केन्द्रीय सरकार द्वारा देक्कन के प्रबंधनकार के संबंध नियोजकों और उनके कर्मचारों के बीच, जापुर में निविष्ट अधिनियक विवाद में अधिनियक भवित्व, जापुर के पंचायत का प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-92 का प्राप्त कुरा था।

[संख्या एक-12012/538/87 भी. 51(ए)]
मुख्यमन्त्री कर्म शर्मा, देक्कन अधिकारी

MINISTRY OF LABOUR

New Delhi, the 17th July, 1992

S.O. 2141.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 16-7-1992.

[No. L-12012/538/87-D.II (A)]
S. C. SHARMA, Desk Officer

वाच्य

केन्द्रीय औद्योगिक विवादित विवरण, जापुर

केस नं. सी.प्रा.टी. 31/88

रेफरेंस: भारत सरकार, अम मंत्रालय, मई दिल्ली का प्राप्ति कराने एक. 12012/538/87-भी 5(ए) दिनांक 13-5-1988
भारतीय स्टेट बैंक स्टाफ एसोसिएशन, जापुर।

—प्रार्थी

बनाम

भारतीय स्टेट बैंक, जापुर।

—प्रार्थी

उपस्थित

मानवीय व्यवस्था श्री जामिल जो, अ.ट.ट.ब.जे.एस.

प्रार्थी की ओर से:

श्री नौ. डॉ. पुरोहित

प्रार्थी की ओर से:

श्री ए. के. लैन

विनाश:

23-4-1992

प्रार्थी

श्री सी. डी. चतुर्वेदी भूनियम की ओर से तथा श्री एस. के. लैन विनाश की ओर से उपस्थित हैं। श्री चतुर्वेदी ने एक प्रार्थना पत्र हस आशय का

प्रस्तुत किया कि वे इस प्रकरण में भागे कार्यवाही नहीं करता बहुते हैं। माम से भी परिचयिताओं को देखते हुए इस प्रकरण में नो वित्पूर भारतीय पालित किया जाता है जो केन्द्र सरकार को प्रशासनार्थी नियन्त्रित भारतीय सरकार द्वारा आवेदन किया जाता है।

भारत सिद्ध, वीडासीत अधिकारी

मई दिल्ली, 17 जून 1992

का.प्रा. 2142.—सीधोगिक विवाद अधिनियम, 1947 (1947 का 14) की द्वारा 17 के भासुरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधनकार के संबंध नियोजकों और उनके कर्मचारों के बीच, जापुर में निविष्ट अधिनियक विवाद में केन्द्रीय सरकार भारतीय विवादित विवरण व अधिकारी, चतुर्वेदी के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-92 को प्राप्त कुरा था।

[संख्या एक-12012/491/86-डी-ए(ए)]

मुख्यमन्त्री कर्म विवरण अधिकारी

New Delhi, the 17th July, 1992

S.O. 2142.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 17-7-1992.

[No. L-12012/491/86-D.II (A)]

S. C. SHARMA, Desk Officer

ANNEXURE

BEFORE SHRI ARVIND KUMAR, PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM-LABOUR COURT, CHANDIGARH

I. D. 54/87
P. C. Heer.

Vs.

State Bank of India.

For the workman—Shri J. G. Verma.
For the management—Shri R. K. Chopra.

AWARD

Central Government vide Gazette Notification No. L-12012/491/86-D.II(A), dated 21st November, 1987 issued U.S. 10(1)(A) of the I. D. Act 1947 referred the following industrial dispute to this Tribunal for adjudication :

“Whether the action of the management of State Bank of India, Regional Office, Shimla is justified in stopping an annual increment of Shri P. C. Heer, especially when the complaint of charge against him was withdrawn. If not to what relief is the concerned workman entitled ?”

2. Case as set out in the claim statement is that the workman joined services of the State Bank of India 14-2-1977 as clerk-cashier at Gagrat Branch having unblemished career. It was alleged that K. C. Sharma took over as Branch Manager Gagrat in the month of February 1983 and started finding faults within him and persuaded the parties to lodge complaints against him and at one instance got the complaint from the parties and ultimately this complaint was withdrawn and the case was closed. It was further alleged that out of the four charges one relates to the complaint of Shri Parbat Chand of alleged non deposit of Rs. 700 and the inquiry was ordered. The inquiry was conducted in utter disregard of the procedure. During the inquiry Parbat Chand was pre-

arised to give evidence and one Nand Singh having confirmed the deposit of Rs. 500 in the account of Parbhav Chand. Only one charge was proved against him which relates to the complaint of Parbhav Chand. It was further alleged that action of the Bank in stopping of increment with cumulative effect is illegal and unjustified on the ground that findings of the inquiry officer was perverse. He has misread the document and prayed that action of the management be declared illegal and the respondent management be directed to restore the increment and pay the arrears of the same.

3. Claim of the petitioner was contested by the Respdt. bank by filing written statement. All the allegations levelled by the petitioner in the claim statement were denied. The bank has taken up the stand that from the four charges levelled against the petitioner and one of them pertaining to wrong statement made by him in his application for gold loan. Another charge was on the basis of complaint of Parbhav Chand is not depositing Rs. 700 by the petitioner which was paid by him to the petitioner. Respdt. Bank also admitted that Parbhav Chand had ultimately withdrawn his complaint obviously for the reason that the petitioner might have settled the issue with the complainant. Further the management took the stand that the inquiry was conducted as per rules and full opportunity was given to the petitioner to defend himself. It was also pleaded that only two charges were proved (stated above). It was further pleaded that the disciplinary authority had applied its mind judiciously because in the tentative decision it was proposed to stop two increments with cumulative effect and later on it was changed to one increment with cumulative effect in the personal hearing to the petitioner.

4. Replication was also filed reasserting the same contents as in the claim statement.

5. In support of his case the petitioner filed his affidavit Ex. W-1 in evidence in which it was stated that Parbhav Chand at whose complaint the inquiry was initiated had withdrawn his complaint but the management still continued with the inquiry. It was also stated in the affidavit that the inquiry officer brushed aside the statement of the defence witnesses and inquiry was not held in accordance with the principle of natural justice. He has also relied on documents Ex. W-2 to W-4.

Respdt. management produced Shri Surinder Kumar Nanda who filed his affidavit Ex. M-1 and also relied on documents M-2 letter dated 15-2-1986, M-3 letter dated 5-11-85, M-4 minutes of the personal hearing dated 4-11-1985, M-5 letter dated 31-10-1983, M-6 findings of the inquiry, Ex. M-7 complaint of Parbhav Chand, Ex. M-8 complaint dated 21-6-1983, Ex. M-9 complaint dated 28-4-1984, Ex. M-10 pay-in-slip dated 17-10-83, M-11 letter dated 14-5-1984, M-12 application dated 8-10-1982, M-13 letter dated 10-8-1984, M-14 letter dated 11-8-84 and Ex. M-15 letter dated 22-3-1985.

I have heard the arguments of both the parties and gone through the evidence and record. The representative appearing on behalf of the workman in all fairness has not assailed the inquiry proceedings as well as the findings of the inquiry officer and has prayed, only qua the punishment as provided U/S 11-A of the I. D. Act 1947 on the ground that the petitioner is in the service of the bank since 1977 and his work and conduct was good and has only proved for the interference to the extent that the stopping of one increment should not have been the effect of postponing the future increment as imposed on the petitioner. After careful consideration of the documents on the file the present case deserve interference. Ex. M-15 is the tentative decision given by the disciplinary authority in which it was proposed to stop two increments, having the effect of postponing future increments (cumulative effect). But however in the minutes of personal hearing granted to the petitioner which is Ex. M-14 on 4-11-1985 the disciplinary authority has reduced the punishment from stopping two increments to stopping of one increment and also expressed his concern seeing the young age of the petitioner and giving him opportunity to reform and stressed that lenient view has been taken. However the cumulative effect remains the same as referred in the communication made by the disciplinary authority to the petitioner vide Ex. M-3 dated 5-11-1985. Once the disciplinary authority has decided to take lenient view taking into consideration of the young age of the petitioner and giving him opportunity to reform, then the impact of leniency should have been there. Cumulative effect has to effect over

the entire service career of the workman and there is permanent loss, and at the end of the service the cumulative loss would run into very large figure and it would also effect pensionary benefits. The punishment of stopping of increments with cumulative effect is to be imposed after careful consideration and application of mind to the resultant to the total consequences. But however in the present case the situation is contrary as appears from Ex. M-14 the minutes of the personal hearing in which it is apparent that the disciplinary authority wanted to take lenient view and that is so the cumulative effect should not have been there and the disciplinary authority did not take into consideration the consequences of the cumulative effect.

Therefore in view of the discussion made in the earlier paras the punishment imposed on the petitioner with regard to the stopping of one increment should remain the same. However that shall not have the cumulative effect. With this modification the Award is returned to the Ministry.

Chandigarh,

Camp at Shimla

Dated : 19-6-1992.

ARVIND KUMAR, Presiding Officer

नई दिल्ली, 17 जुलाई, 1992

का.आ. 2143.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केंद्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकारण, जयपुर के प्रकाशित करती है, जो केंद्रीय सरकार को 16-9-92 को प्राप्त हुआ था।

[संख्या एस-12012/457/87-डी-II(ए)]

सुभाष चन्द शर्मा, डेस्क अधिकारी

New Delhi, the 17th July, 1992

S.O. 2143.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 16-7-1992.

[No. L-12012/457/87-D.II (A)]

S. C. SHARMA, Desk Officer

अनुबन्ध

केंद्रीय औद्योगिक व्यायामिकरण, जयपुर

फैस नं. सी.आई.टी. 33/88

रेफरेंस: भारत सरकार, अम मंत्रालय, नई दिल्ली का आदेश क्रमांक एस. 12012/457/87-डी-II (ए) दिनांक 13-5-1988
श्री एस. के. यांबला मार्गेन एस. बी. आई. स्टाफ एसेसिंग
भालवर।

—प्रार्थी

बनाम

भारतीय स्टेट बैंक, जयपुर।

—प्रार्थी

उपस्थित

माननीय व्यायामिक श्री जातरेश जी, आर.एड जे एस.

प्रार्थी की तरफ से

श्री सी. डी. चन्द्रेशी

प्रार्थी की ओर से:

श्री एस. के. यांबला

दिनांक शब्दांक:

23-4-1992

अवधि

श्री सी.डी. चतुर्वेदी यूनियन की ओर से तथा श्री एस. कै. जैन विपक्षी की ओर से उपस्थित हैं। श्री चतुर्वेदी ने एक प्रार्थना पत्र इस आवाय का प्रस्तुत किया कि वे इस प्रकरण में श्रमों कोई कार्यवाही नहीं करना चाहते हैं। अतः मामले की परिस्थितियों को देखते हुए इस प्रकरण में तो डिस्ट्रिक्ट ब्राउड पारित किया जाता है जो भारत सरकार को प्रकाशनार्थ नियमानुसार मंजूर जाए।

जगत सिंह, पीठासीन प्रधिकारी

नई दिल्ली, 17 जुलाई, 1992

का.प्रा. 2144—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आकर राजस्थान के प्रबंधतात्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निविष्ट ओद्योगिक विवाद में ओद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-92 को प्राप्त हुआ था।

[संख्या एल-12011/38/89-आई आर(बी-1)]

सुशाश चन्द शर्मा, दैनिक अधिकारी

New Delhi, the 17th July, 1992

S.O. 2144.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bank of Rajasthan and their workmen, which was received by the Central Government on 16-7-1992.

[No. L-12011/38/89-IR (B-1)]

S. C. SHARMA, Desk Officer
अनुबन्ध

केन्द्रीय ओद्योगिक अधिकरण, जयपुर

केस नं. सी.आई. टी. 100/89

रेफरेंस: भारत सरकार, धम मंत्रालय नई दिल्ली का आदेश क्रमांक एल-12011/38/89-आई. आर. (बी) आई दिनांक 26-9-89
श्री ज्ञानचंद शर्मा, आम कुर्हों का रास्ता, सद्गी मंडी, निषाई, जिला टॉक।

—प्रार्थी

बामाम

बैंक आकर राजस्थान व अस्ट्री

—धर्मार्थी

उपस्थित

मानीर द्वारा श्री जगत सिंह, आर.ए.जे.एस.

प्रार्थी की ओर से :

श्री ज्ञानचंद शर्मा प्रार्थी स्वयं

अधर्मार्थी की ओर से :

श्री केवल राम जी

दिनांक ग्राहण :

10-6-1992

अवधि

श्री ज्ञानचंद शर्मा प्रार्थी स्वयं व श्री केवल राम अधर्मार्थी की ओर से हाजिर हैं। पञ्चाकारान के प्रतिनिधि व शामिक ने आज एक बाहमी समझौता पेश किया जो तसवीर किया गया। पञ्चाकारों की प्रार्थना पर इस मामले में समझौते के आदार पर अवाड़े पारित किया जाता है। समझौता अवाड़े काढ़ने देंगा। आई को अति केन्द्र सरकार को प्रकाशनार्थ नियमानुसार मंजूर जाए।

जगत सिंह, पीठासीन प्रधिकारी

समझौता प्राधिकारी, केन्द्रीय ओद्योगिक

अधिकरण, जयपुर

सी. सी.आई.टी. 100/89

ज्ञान चन्द बनाम बैंक आकर राजस्थान, जयपुर व धर्म

धर्मार्थी एवं प्रार्थी के मध्य समझौता।

सम्बन्ध अवधि

दोनों पक्षों में उपोक्त वाद में निम्न शर्तों पर समझौता संपन्न हुआ।

(1) यह कि प्रार्थी ज्ञान चन्द को प्रारम्भ में अस्थायी चम्परासी के पद पर नियुक्ति प्रदान अप्रार्थी करेगा। प्रार्थी का नाम मौजूदा चर्चित चतुर्थ श्रेणी कर्मचारी के दंतद के बात में जोड़ दिया जायेगा। प्रार्थी की जब तक स्थायी नियुक्ति नहीं हो जाती, अप्रार्थी उसे अर्थात् श्री कर्मचारी के रूप में जगत उपलब्धि के अनुसार नियुक्ति देता रहेगा। प्रार्थी की स्थायी नियुक्ति के समय वह बैंक में धर्म धर्मार्थी के बीच कार्य हेतु कोई कार्यादा (वेतन वृद्धि, अवकाश इत्यादि) नहीं मांगेगा।

(2) यह कि अप्रार्थी, प्रार्थी को पुराने वेतन का भुगतान नहीं करेगा एवं इसे पुरानी सेवा के स्थान पर बैंक में चतुर्थ कर्मचारी के नये कर्मकार नाम माना जावेगा।

(3) यह कि पिछले सेवाकाल का नाम प्रार्थी को देख नहीं होगा।

(4) यह कि स्थायी नियुक्ति नई नियुक्ति को आधार भानकर होगी।

(5) यह कि बैंक को प्रवायकतानुसार प्रार्थी की नियुक्ति की जावेगी।

(6) यह कि वेतन का भुगतान न्यूनतम स्केल जो कि चतुर्थ श्रेणी कर्मकार के आधार पर वाई परटेड सेटिलमेंट दिनांक 10-4-89 के पैरा 18(1) के अनुसार वेतन/सी.सी.ए. यकान किराया महंगाई भत्ता जो देय बनता है को जोड़कर, दैनिक वेतन निकाल वेतन का भुगतान किया जावेगा।

उपरोक्त समझौते के आधार पर समझौता व्यायालय से विवेदन है कि एवाड़े पारित कर दिया जावे।

जयपुर:

दिनांक :

(ह०/-) प्रार्थी पक्ष :

(ह०/-) अप्रार्थी पक्ष :

नई दिल्ली, 21 जुलाई, 1992

का. प्रा. 2145.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार तमिलनाडु भरकन टाइल बैंक लि. के प्रबंधतात्र के सभव नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निविष्ट ओद्योगिक विवाद में ओद्योगिक अधिकरण, तमिलनाडु, मद्रास के पचपट को प्रकाशित करती है, जो केन्द्रीय सरकार की 20-7-92 की प्राप्त हुआ था।

[संख्या एल-12012/40/87-डी-4 (ए)]

सुशाश चन्द शर्मा, दैनिक अधिकारी

New Delhi, the 21st July, 1992

S.O. 2145.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Tamil Nadu, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Tamilnad Mercantile Bank Ltd. and their workmen, which was received by the Central Government on 20-7-1992.

[No. L-12012/40/87-D.IV (A)]

S. C. SHARMA, Desk Officer

ANNEXURE

BEFORE THE INDSTRIAL TRIBUNAL, TAMIL NADU,
MADRAS

Tuesday, the 29th day of October, 1991

PRESENT :

Thiru M. Gopalswamy, B.Sc., B.L., Industrial Tribunal.

Industrial Dispute No. 119 of 1987

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workmen and the management of Tamilnad Mercantile Bank Limited, Tuticorin)

BETWEEN

The Workman represented by
The General Secretary,
Tamilnad Mercantile Bank Employees
Union, Kanjanpuram, Pin-629154.

AND

The Assistant General Manager,
Legal Department,
Tamilnad Mercantile Bank Ltd., Tuticorin.

REFERENCE :

Order No. 12012/40/87-D.IV (A), dated 6-10-1987 of the Ministry of Labour, Government of India.

This dispute coming on for final hearing on Thursday, the 29th day of August, 1991 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru K. L. Santhanam, Authorised Representative for the workman and of Thiruvalargal M. Elumalai, Ilanchezian and P. K. M. Andal Padmini, Advocates appearing for the Management, and this dispute having stood over till this day for consideration, this Tribunal made the following :

AWARD

This dispute between the workmen and the management of Tamil Nadu Mercantile Bank Limited, Tuticorin arises out of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-12012/40/87-D.IV (A), dated 6-10-1987 of the Ministry of Labour, for adjudication of the following issue :

"Whether the action of the Management of Tamilnad Mercantile Bank Ltd., Tuticorin in transferring Shri V. Mohandas, Supervisor in the H.O. at Tuticorin and allowing him to join at Gulbarga only as a Clerk, is justified ? If not, to what relief Shri Mohandas is entitled to ?"

2. The Petitioner Union states as follows : V. Mohandas, Supervisor has been transferred from Tuticorin branch of the Respondent to Gulbarga branch in Karnataka by order dated 3-12-1986 as a clerk, that is to an inferior post without obtaining his consent. The transfer is an illegal, malafide and arbitrary one. The respondent not having any definite principles regarding transfer has resorted to unfair treatment by transfer of V. Mohandas in the nature of victimisation. He was Secretary of the Head Office branch of the Petitioner Union at the time of the transfer. Another member of the Sub-staff P. Chidambara Kumar was transferred from Trivandrum branch to Hyderabad in 1985. While the respondent has settled the dispute regarding the transfer of Chidambara Kumar in the present of the Conciliation Officer, it had adamantly refused to give relief to V. Mohandas transferred to Gulbarga branch. An allowance of Rs. 252 which was being paid to Mohandas as a Clerk of the Supervisor cadre is now denied to him as Clerk in Gulbarga branch from 3-12-86 onwards. The Petitioner union brought this matter for conciliation before the Assistant Commissioner of Labour, Trivandrum. Eventhough the Assistant Commissioner of Labour advised the Respondent to effect retransfer as Supervisor staff to Tuticorin, the said advise was unheeded. The respondent has failed to appoint or designate Mohandas in

Gulbarga branch as Supervisory staff and enable him to get Rs. 252 as special allowance. The transfer of Mohandas to Gulbarga is a clear case of victimisation and malafide exercise of power. The said transfer is liable to be set aside and further an order be passed directing the respondent to pay Mohandas the monthly allowance of Rs. 252 from 3-12-86 onwards as a Supervisory staff. A suitable award may be passed.

3. The Respondent in its counter states as follows : The Industrial Dispute brought up by the Union is not maintainable for the reasons that the Petitioner-union does not have the legal character namely substantial membership of the bank and it does not have authority or capacity to espouse the grievance of the Clerk Mohandas in the absence of a proper decision of the General body of the Union convened for the purpose. Further the respondent should have been the Chairman of Tamil Nadu Mercantile Bank Limited and not Assistant General Manager (Legal Department) as it is shown in the cause title. The petitioner union is a very small minority union as against Tamilnadu Mercantile Bank Employees Association which has majority membership. Without being a true representative of the employees of the bank the petitioner union is indulging in frivolous litigation by bringing out this Industrial Dispute.

4. The bank is entitled to effect transfer of its employees to serve the interests of efficient administration and general business. Mr. Mohandas was only a clerk drawing special allowance of Rs. 245 which is payable to certain special duties attached to Supervisory staff clerk. Though the name Supervisory staff is given he is only a clerk and there is no special pay scale for the Supervisory staff and it is not a case of promotion of a clerk. The policy of making clerks or posting them as Supervisory staff with certain special responsibilities, carrying a special allowance has been evolved and followed by the bank. Therefore the Supervisory staff post is not in any way superior to the post of clerk in the matter of pay scale or cadre. Thiru Mohandas was working in the Head Office in the post of the Supervisory staff from 8-3-84 only and was transferred to Gulbarga branch as a clerk only as a routine transfer on administrative grounds. It was not made due to any spirit of victimisation or in a arbitrary manner. Shastri award does not apply to the respondent bank. Mohandas by virtue of transfer to Gulbarga has not been demoted but he has been only denied the post of Supervisory staff at Gulbarga branch and hence he cannot claim the special monthly allowance which is payable only to a clerk doing certain special duties of the supervisory staff. The transfer in question cannot be an Industrial Dispute at all. The Industrial Dispute is totally mis-conceived and liable to be dismissed.

5. The points for determination in the Industrial Dispute are as follows :

- Whether the transfer of Mohandas has given any right to raise an Industrial Dispute which could be espoused by any union or Association of Workmen ?
- Whether the Petitioner Union has required the locus standi, legal character and legal capacity to raise this dispute and
- Whether the action of the Management in transferring Shri V. Mohandas, Supervisor in the H.O. at Tuticorin and allowing him to join at Gulbarga only as a Clerk, is justified ? If not, to what relief Shri Mohandas is entitled to ?

6. By consent of parties Exs. W-1 to W-22 were marked for the Union and Exs. M-1 to M-7 have been marked for the Respondent/Management. This is an interesting but pointless dispute. The workman Mohandas who was at the time of impugned transfer, working as a clerk of the Supervisory staff kind, in the Head Office at Tuticorin was prior to that position working as a mere clerk. Though initially he might have approached the petitioner-union and requested to fight his case against the transfer, he has filed a memo in this Tribunal on 6-1-90 that he is not at all aggrieved by the transfer, that he wishes to continue at Gulbarga Branch as clerk, that he is not interested in any monetary claim any longer and that the present Industrial Dispute may be dismissed to his pleasure. Within the ambit of the definition of I.D. in Sec. 2(k) of the I.D. Act, the controversy regarding transfer can only be related to terms of employment or conditions

of employment and not of any other nature. The effect of transfer of Mohandas from the post of Supervisory staff clerk to the post of clerk in the Gulbarga branch has resulted in loss of special allowance Rs. 252/- besides change of place with attendant hardship. There can be no remedy regarding hardship and inconvenience arising from transfer to a new place when such transfer is otherwise lawful and not arbitrary or malafide.

7. The Petitioner has not shown that the clerk working as a Supervisory staff and drawing the monthly allowance is on a higher pay scale than that of a clerk. Hence we have to accept the respondent's contention that the post of clerk and the post of the Supervisory staff clerk saddled with certain additional duties, belong to the same cadre with a single pay scale and that posting a clerk as a Supervisory staff clerk does not involve any promotion. The policy of having posts of Supervisory staff in which clerks ought to be appointed with eligibility to draw Supervisory monthly allowance is reflected in Ex. M-1. Transfers of Mohandas, Chidambara Kumar and Kadirvel have been called arbitrary and vindictive by the Petitioner-Union and its General body Executive Committee claims to have passed a resolution at a meeting at Madurai on 8-12-85, incorporating the decision of the Executive Committee to authorise the office bearers to take all necessary actions to undue injustice done to the three transferred employees. This is seen in Ex. M-7 papers. The General body of the Petitioner-Union has not met and passed an identical resolution supporting this issue and in favour of raising an Industrial Dispute in the matter of transfer of Mohandas. In the absence of resolution by the General body the mere decision of the Executive Committee which met at Madurai cannot clothe the Petitioner-Union to the authority to raise the present Industrial Dispute. The Petitioner union has not produced the bye-laws governing the Petitioner Union or the Minutes Book. It has also not proved the strength of its membership. It is not necessary for us to go into the question whether substantial number of the workmen being members of the Petitioner union have evinced interest in bringing out this Industrial Dispute. For other obvious reasons, we hold that the dispute has not been properly sponsored by the Petitioner Union and that it has not obtained necessary authority from the General body of the union. I therefore answer points 1 and 2 against the petitioner.

8. Regarding the merits, we can safely conclude that no term of employment has been violated by the Respondent in transferring Mohandas from Tuticorin to Gulbarga. The said Mohandas has himself shown his willingness to serve at the present station Gulbarga until his next transfer, when he himself appeared before this Tribunal and presented the memo on 6-12-90 making his position clear. Since payment of supervisory or special allowance every month, is a consequence of the post held, Mohandas cannot be paid the special monthly allowance for his work as a clerk and not as a Supervisory Staff clerk. It is entirely within the powers of the Respondent to transfer Mohandas from Supervisory clerk post to an ordinary clerk post so long as both these posts belong to the same cadre having the same pay scale. There is no evidence to hold that the respondent was having any malafide approach or harbouring any spirit of victimization in causing the transfer of Mohandas from Tuticorin to Gulbarga. I therefore decide on this point that the Petitioner Union or Mohandas is not entitled to any relief claimed in this Industrial Dispute.

9. In the result, Industrial Dispute is dismissed. No Costs.

Dated, the 29th day of October, 1991.

THIRU M. GOPALASWAMY, Industrial Tribunal

List of Witnesses & Exhibits in I. D. 119/87.

WITNESSES EXAMINED

For both sides : None.

DOCUMENTS MARKED

For workman :

Ex. W-1/10-4-80.—Appointment order of Thiru V. Mohandas for the post of apprentice Clerk.

- Ex. W-2/25-11-81.—Confirmation order as clerk issued to Thiru V. Mohandas.
- Ex. W-3/8-3-84.—Letter from the management-Bank to Thiru V. Mohandas informing that he was posted as supervisory staff.
- Ex. W-4/8-3-72.—Circular issued by the Head Office of the Management Bank to all Branches regarding the introduction of the supervisory cadre in all branches.
- Ex. W-5/21-6-84.—Circular issued by H. O. of the Management-Bank to all Branches regarding the posting of certain supervisory staff (xerox copy).
- Ex. W-6/3-12-85.—Transfer order issued to Thiru V. Mohandas as supervisory staff to Gulbarga, Karnataka State.
- Ex. W-7/3-12-85.—Pay Bill for the month of December, of Thiru V. Mohandas as clerk at Gulbarga Branch of the Management-Bank.
- Ex. W-8/3-4-84.—Letter from Petitioner-Union to the Management-Bank enclosing charter of demands to frame a fair transfer policy and postal acknowledgement from the Management-Bank for having sent this letter.
- Ex. W-9 series 9-12-88.—Letter from Petitioner Union to the Management-Bank enclosing copy of resolution adopted for raising the cause of Thiru V. Mohandas regarding his transfer with acknowledgement from the Management-Bank for having sent this letter.
- Ex. W-10/9-12-85.—Copy of the portion of the minutes book of the Petitioner-Union which contains the resolution passed in the Executive Committee meeting held at Madurai on 8-12-85 regarding the transfer of Thiru V. Mohandas.
- Ex. W-11/10-1-86.—Letter from the Petitioner-Union to the Regional Labour Commissioner (Central), Madras-6 regarding transfer of Thiru V. Mohandas to Gulbarga (copy).
- Ex. W-12/14-3-86.—Letter from Management-Bank to the Assistant Labour Commissioner (Central), Trivandrum in reply to Petitioner-Union's letter dated 10-1-86 (copy).
- Ex. W-13/7-8-86.—Letter from Petitioner-Union to the Assistant Labour Commissioner (Central), Trivandrum in reply to the remarks of the Management-Bank dt. 14-3-86 (copy).
- Ex. W-14/7-10-86.—Notice of conciliation from the Assistant Labour Commissioner (Central), Trivandrum issued to the Management-Bank.
- Ex. W-15/22-12-87 series 23-12-87.—Letters from Management-Bank to Thiru G. Ragupathi regarding the decision of the Management to abolish the supervisory cadre.
- Ex. W-16/13-6-88.—Letter from Petitioner-Union to the Management Bank questioning the proposed abolition of supervisory cadre.
- Ex. W-17/5-4-88.—Letter from Thiru G. Ragupathi, Supervisory staff to the Management-Bank in reply to Ex. W-15 series (xerox copy).
- Ex. W-18/23-8-84 series.—Copy of letter of Petitioner-Union to the Management-Bank requesting to furnish copy of rules and regulations to govern the service conditions of the employees of the Management-Bank and acknowledgement from the Management-Bank.
- Ex. W-19/14-3-84.—Attested copy of the understanding entered before the Regional Labour Commissioner (Central), Madras.

Ex. W-20 series.—Copy of Central Government Gazette Notification dated 27-7-89 and Award of the Central Govt. Industrial Tribunal at Calcutta (Reference No. 147/88 dated 10-11-88).

Ex. W-21 series.—Order No. L. 12012/74/89-IR(B)-I, dt. nil, Ministry of Labour, Govt. of India (Reference for adjudication to Central Government Industrial Tribunal, Bangalore) (Xerox copy).

Ex. W-22 series.—Order No. L. 12012/74-89-IR(B)-I dt. Nil, Ministry of Labour, Govt. of India (Reference for adjudication to Central Govt. Industrial Tribunal, Bombay) (Xerox copy).

For Management :

Ex. M-1/8-3-72.—Circular issued to all Branches in relation to the introduction of the supervisory cadre in the Management-Bank (xerox copy).

Ex. M-2/8-3-72.—Charter of demands raised by the Petitioner Union at the Executive Committee held on 1-4-84 at Madurai (xerox copy).

Ex. M-3/8-3-72.—Same as Ex. W-15 series.

Ex. M-4/5-4-88.—Letter from Thiru G. Raghupathy to the Management-Bank protesting against the abolition of the supervisory staff post by the Management (xerox copy).

Ex. M-5/13-6-88.—Letter from Petitioner-Union to the Management-Bank questioning the proposed abolition of the supervisory cadre (xerox copy).

Ex. M-6/2-7-81.—Transfer order issued to Thiru D. Alex (Supervisory Staff) from Theni to Bommidi during the year 1981-82 and the copies of the pay bills issued to Thiru D. Alex when he was working at Bommidi branch after his transfer from Theni (xerox copy).

Ex. M-7/9-12-85.—Letter from Petitioner-Union to the Management-Bank enclosing the resolutions held at Madurai on 8-12-85 (xerox copy).

नई दिल्ली, 23 अगस्त, 1992

का आ. 2146.—ओरोगिक विवाद प्रधिनियम, 1947 (1917 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के मन्त्रियों और उनके कर्मकार्ताओं के बीच, शनूबध में निर्दिष्ट ओरोगिक विवाद में केन्द्रीय सरकार ओरोगिक प्रधिकरण न. 1 धनबाद के पचापट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-7-92 को प्राप्त हुआ था।

[संख्या पत्र—12012/72/90—शार्फ शार्मा (नी—3)]

सुशाय चन्द्र शर्मा, ईम्प क्षेत्रिक अधिकारी

New Delhi, the 23th July, 1992

S.O. 2146.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No.-1, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 21-7-92.

[No. L-12012/72/90 IR(B-3)]
S. C. SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under sec 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 205 of 1990

Parties :

Employers in relation to the management of State Bank of India, Region-I, Ranchi.

AND

Their Workmen.

Present :

Shri S. K. Mitra, Presiding Officer.

Appearances :

For the Employers.—Shri A. K. Gupta, Authorised Representative.

For the Workmen.—Shri T. K. Guha, Dy. General Secretary, SBI Employees Union (Bihar State).

STATE : Bihar

INDUSTRY : Banking

Dated, the 14th July, 1992

AWARD

By Order No. L-12012/72/90-I.R. (B-3), dated, the 7th September, 1990, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of State Bank of India, Region-I, Ranchi in not regularising the service of Shri Dinesh Keshri is justified ? If not, to what relief the workman is entitled to and from which date?”

2. The case of the management of State Bank of India, Region-I, Ranchi, as disclosed in the written statement-cum-rejoinder, details apart, is as follow, :-

The present reference is bad in law and not maintainable. Dinesh Keshri, the concerned workman, worked in the State Bank of India as temporary messenger/guard/sweeper. He applied for permanent absorption and accordingly he was interviewed by the Bank on 9-8-85. But he was not selected for the reasons that he was overaged at the time of his initial temporary appointment in the Bank. Moreover the engagement as such was irregular and unauthorised. He was overaged at the time of initial temporary appointment and so the temporary appointment was also void ab initio. A settlement dated 17-11-87 was entered into between the State Bank of India and All India State Bank of India Staff Federation. In view of the said settlement, advertisement was made in the issue of The Hindustan Times, August 1, 1988 to give a chance for being considered for permanent appointment in the Bank's service to those who have served temporarily in the Bank as messenger, Farriash, Cash, coolie, Sweepers, Bank guards etc. for certain periods as specified therein. The age limit, according to the said advertisement, was specified to be between 18-26 year. The age limit so specified is the relaxed age limit; the earlier age limit was 18 to 24 years. In response to the said advertisement Shri Keshri applied and he was interviewed on 9-8-1989. He had been selected and kept in panel. As per para 12 of the said settlement, all disputes raised by an affiliate of the Federation or an individual employee or anybody else in regard to the matter covered by the settlement will be deemed to have been settled by virtue of the agreement. Shri Keshri has subjected himself to the terms of the settlement by applying in response to the advertisement made in pursuance to the said settlement and by appearing in the interview on 9-8-89, he can be given the benefit of the settlement and employment in terms of the settlement only when his dispute is withdrawn in terms of the settlement by the union. He cannot be allowed to accept the agreement/settlement in part.

3. The case of the concerned workman, as disclosed in the written statement submitted on his behalf by State Bank of India Employees Union (Bihar State), Ranchi, briefly stated, is as follows :

Upon opening of the Lodma Branch of State Bank of India, there arose need for appointment of some employees on subordinate cadre. The then Branch Manager held an interview and appointed Dinesh Keshri, the concerned workman, on 19-9-80 to work in subordinate cadre. He performed different kinds of duties, such as, sweeper, Bhalla guard messenger (peon) and Canteen boy as per order of the branch Manager. Initially he was paid daily wage of Rs. 3 only. Daily wage was paid for first nine months from the date of initial appointment in the year 1980. Thereafter he was paid scale wage for 268 days. After that he was being paid monthly wage of Rs. 150/- as Canteen Boy. There never existed a canteen at Lodma Branch of the Bank. In fact, he has been performing the duties of messenger (peon) and the management is exploiting him by giving meagre wages or Rs. 150 per month, in pursuance of their anti-labour practice. Since there was no canteen at Lodma Branch the concerned workman had never any occasion to work as Canteen boy. The management has violated its own circularised policy to make its temporary employees permanent after completion of 9 months service after initial appointment. In pursuance of the order of the management dated 7-8-85 the concerned workman appeared at an interview at the Bank's Upper Bazar Branch, Ranchi, for absorption in permanent service. However, the Bank management did not make him permanent after the interview nor did it officially inform him as to the reason for not making him permanent. On verbal enquiries, he was informed by the Ranchi Zonal Office of the Bank that he was overaged at the time of interview and therefore his case was not considered. He submitted his reply that his period of temporary service was to be deducted from his present age. Thereupon the management asked him to make written representation which he did, but to no effect. He continued to receive monthly wage of Rs. 150 per month and in 1989 the management again asked him to appear at a fresh interview on 9-8-89. He appeared but in vain. The management is hibernating over his case and informed the Asstt. Labour Commissioner (C), Ranchi, who was holding conciliation in the matter that the result was yet to be published by letter dt. 11-9-89. Though a period of more than one year has since elapsed, he has not been informed about the result of his interview and he continued to work as full time messenger/peon and getting remuneration of Rs. 150 per month. The action of the Bank in not confirming him after the lapse of 9 months from the date of his initial appointment and asking him to appear at interview in 1985 for absorption in permanent service is mala fide and to deny him the benefit of provident fund and other superannuation benefits. In the circumstances the union has prayed that the management be directed to regularise or confirm the service of the concerned workman with effect from 19-6-1981 with consequential benefits.

4. In rejoinder to the written statement of the sponsoring union, the management of State Bank of India, has stated that the establishment of Lodma Branch of the Bank and the appointment of the concerned workman in that Branch are matters of record. The statement that the concerned workman worked as canteen boy as per order of the Branch Manager is not correct as the Bank was not having any canteen at Lodma Branch because the staff strength at that Branch was much less than 200. The Local Implementation Committee which is a Welfare Committee arranges for canteen facility at the Branch. The concerned workman is not entitled to regularisation.

5. In rejoinder to the written statement of the management, the sponsoring union has stated that the concerned workman never concealed any material fact about his date of birth. He was still under 26 years of age and the notice of State Bank of India, Patna Head Office dated 1-8-88 envisages that the age limit for temporary appointment is 18—26 years. Local Implementation Committee is creature of the Bank headed by the Branch Manager as the ex-officio President of the Committee. But the Bank routes the wages of Canteen boy

through Local Implementation Committee by way of anti-labour practice while canteen employees of the Branch having staff strength of 200 or more are being paid scale wages of subordinate cadre. In the circumstances, the union has prayed that the management be directed to regularise/confirm the service of the concerned workman with effect from 19th June, 1981 with consequential benefits.

6. In order to justify its action the management has examined two witnesses, namely, MW-1 Y. S. Rao and MW-2 Shaligram Mishra and laid in evidence a sheet of documents which have been marked Exts. M-1 to M-11/1.

On the other hand, the union has examined two witnesses, namely, WW-1 Dinesh Keshri, the concerned workman, WW-2 Tapas Kumar Bhattacharjee and laid in evidence some documents which have been marked Exts. W-1 to W-12.

7. The State Bank of India (hereinafter referred to as Bank) is having a Branch Office at Lodma in the State of Bihar (hereinafter referred to as Branch). According to the union, the concerned workman was appointed in the subordinate cadre of the branch after interview on 19-9-80 upon opening of the branch. The management could not dispute this fact, but has taken the position that the union should prove this fact. The evidence of MW-2 Shaligram Mishra establishes the fact that the branch was opened on 19-9-80 and he remained posted in the branch as Branch Manager from 19-9-80 to 1-10-80. He has further stated that he did not have occasion to hold interview of the concerned workman and gave him appointment in the Bank. The concerned workman has stated that on 19-9-80 the branch was opened and the Branch Manager of the Bank MW-2 Shaligram Mishra alongwith others held his interview for appointment as part time sweeper. He was selected in the interview and joined the service of the branch of the Bank as part time Sweeper and that he used to get Rs. 3 per diem as wages. MW-2 Shaligram Mishra has stated that since the branch was opened recently there was no requirement for sweeper and no sweeper was appointed. This statement of Shri Mishra is difficult to understand for normal hygienic condition is required to be maintained and necessarily the service of the sweeper is required for sweeping, dusting etc. As a matter of fact MW-1 Y. S. Rao has admitted according to Performance Report (Ext. M-9) that there was one sweeper in the branch, but he could not say who was the sweeper before Chawla Karkatta. MW-2 Shaligram Mishra has further stated, when confronted with the attendance-sheet of the concerned workman (Ext. M-12), that he does not remember the circumstances under which the concerned workman was paid Rs. 3 as wages per day from 19-9-80 to 1-10-80. The concerned workman has stated that from 19-9-80 to 1-10-80 Shri Mishra, the Branch Manager made payment of his wages and that Shri Mishra left the branch after 1-10-80, but again came to the branch on deputation and that he made payment of his wages for one month. He has further stated that from 19-9-80 he worked as part time sweeper for 9 months upto 30-6-81 and thereafter he was deployed as Bhalla Guard and worked in that capacity till 29-8-81 and got full wages according to scale. Thereafter he was reverted to the post of part time sweeper at the rate of wages of Rs. 3 per day. He was deployed to work in various capacities and ultimately from 1-1-84 he has been working as Canteen boy. His attendance sheet (Ext. W-12) discloses that he worked as sweeper from 19-9-80 to 30-6-81. The letter of appointment in his favour indicates that he was temporarily appointed as Bhalla Guard from 1-7-81 for 30 days (Ext. W-6) and thereafter he was again appointed by letter of appointment as Bhalla Guard for 30 days with effect from 31-7-81 (Ext. W-7). Another letter of appointment indicates that he was appointed temporarily as Bhalla Guard from 29-8-81 for 28 days (Ext. W-8). All these letters of appointment indicate that the concerned workman worked as temporary Bhalla Guard till 26-10-81. Statement of attendance (Ext. W-12) indicates that he worked as messenger thereafter and according to his statement he has been working as Canteen boy since 1-1-84.

8. The management has taken the stance that the statement of attendance (Ext. W-12) is a manufactured document. But MW-2 Shaligram Mishra when confronted with this document, has not vouched for the fact that this is a manufactured document. The concerned workman has emphatically asserted that S. K. Jha, clearing in the Bank prepared the statement

of his attendance during the course of official business in order to send it to the Zonal Office. Shri Jha has not come forward to vouch for the fact that the document is a manufactured document. Besides, this document agrees with the fact as appearing in other evidence on record. That being so, I have no hesitation to over-rule the contention of the management that the document is a manufactured one. It appears that the concerned workman submitted an application dated 26-8-88 under his own signature for appointment (Ext. M-11). As per this application the date of birth of the concerned workman was recorded therein as 10-8-56. This application further discloses the date of his initial temporary appointment as 1-7-81. This statement of his initial appointment obviously is referable to his temporary appointment as Bhalla Guard on scale wages. Anyway, as I have stated above, this application discloses his date of birth as 10-8-56. That being so, at the time of his initial temporary appointment he was more than 24 years of age.

Shri A. K. Gupta, authorised representative of the Bank, has contended that his initial appointment was illegal as he crossed the maximum age limit of 24 years for appointment in subordinate cadre. In order to prove this fact he relied on a circular issued by the Bank on 2-3-87 (Ext. M-4) in terms of which the age limit for appointment in subordinate cadre was between 18—24 years and upper age limit was relaxable in the case of SC/ST candidates for five years and Physically/Orthopaedically handicapped candidates for ten years. Obviously the concerned workman does not fall within the categories of candidates in whose cases the upper age relaxation was allowed. But this circular is related to the period from 2-3-87 and onwards. Shri Gupta has not provided any circular relating to the period when the concerned workman was appointed as temporarily as Bhalla Guard. That apart, the concerned workman did not deliberately suppressed his age in order to get appointment. In the circumstances, I am constrained to hold that the contention of Shri Gupta is not sustainable on facts.

9. According to the management of the Bank, the concerned workman applied for permanent absorption and was interviewed by the Bank on 9-8-85, but since he was over aged at the time of his initial temporary appointment, he was not selected. I have stated that the management could not prove by relevant circular that he was over aged at the time of his initial appointment in the branch. The management has further stated that his engagement was irregular and unauthorised. There is no vestige of evidence on this point.

10. Anyway, it appears that the management of the Bank arrived at a settlement with All India State Bank of India Staff Federation on 17-11-87 and in view of the settlement, the age limit of the candidate in subordinate cadre was specified to be 18—26 years and those candidates who have served temporarily in the Bank as temporary messenger/guard/sweeper were to be considered for permanent appointment. In terms of that settlement an advertisement was issued in the issue of Hindustan Times, August 1, 1988. (Ext. W-9 and M-6). In response to this advertisement the concerned workman applied for a post in subordinate cadre, interviewed on 9-8-89 (Ext. M-11) and was selected. The Bank has taken the position that in terms of para 12 of the settlement all disputes raised by an affiliate of the Federation or an individual employee or anybody else in regard to the above matter will be deemed to have been settled by of the agreement. The sponsoring union is not an affiliate to the Federation. The present industrial dispute was not pending at the time when the concerned workman applied for a post in subordinate cadre. Hence, the term of settlement as embodied in para 12 of the settlement does not at all impinge on the case of the concerned workman. The management of the Bank has also stated in its internal correspondence (Ext. M-10) that the Zonal Office of the Bank received the approval of Local Head Office to recruit 15 persons from the list submitted which included the name of the concerned workman provided there was no industrial dispute pending between him and the Bank as provided in the agreement dated 17-11-1987 and circular. I have already stated that the agreement does not impinge on the case of the concerned workman for consideration of his case for appointment in subordinate cadre.

11. It appears from the evidence that the concerned workman was employed as Canteen boy from 1-1-84. The Branch

having staff strength of seven workmen was not having a canteen run by the Bank. It appears that Local Implementation Committee was running a canteen. From the evidence on record it appears that the Local Implementation Committee is a creature of the Bank. The Committee figures as the intermediary between the canteen employees and Bank employees and the canteen managers are appointed by the Bank and they are responsible for day to day functioning the administration of the canteen. It has been asserted by WW-2 Tapas Kumar Bhattacharjee that Canteen boys are paid by the Bank through Local Implementation Committee by debiting charges account of the Bank. Staff payment are also made through charges account. This being the position, I come to the conclusion that as canteen boy the concerned workman was really an employee of the branch. It appears that the case of the concerned workman for regularisation has been hanging fire since the date of his last interview i.e. 9-8-89. There is no bar in regularising his service in subordinate cadre from that date. Hence, in my view, the service of the concerned workman should be regularised with effect from 9-8-1989 and he should be paid scale wage minus the wage already paid to him.

12. Accordingly, the following award is rendered—the action of the management of State Bank of India, Region I, Ranchi, in not regularising the service of Dinesh Keshri, the concerned workman, is not justified. The management is directed to regularise him in service in subordinate cadre with effect from 9-8-89 and to pay him scale wage minus the wage already paid to him.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer

नई दिल्ली, 17 जुलाई, 1992

वा. पा. 2147.—ऑपरेटिंग विशाव अधिनियम, 1947 (9147/14) का शारा 17 के अनुग्रहण से, केन्द्रीय सरकार, मैगर्स भारत कोकिंग कालन एवं वा. नोथावाय फार्म ट्रियाल के प्रबंधन के मबद्दल नियाजकों और उनके कर्मचारों के द्वारा, अनुमति ने निर्दिष्ट ऑपरेटिंग विशाव में केन्द्रीय गरकार औरोगक अधिकरण (म. 1), के पंचपट का प्रकाशित करायी है, जो केन्द्रीय सरकार को 17-7-92 को प्राप्त हुआ था।

[संख्या पांग—20012 (84)/89—आईआर (कोल-1)]

वी. के. वेनुगोपालन, डेस्क अधिकारी

New Delhi, the 17th July, 1992

S.O. 2147.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Loyabad Coke Plant of M/s. Bharat Coking Coal Ltd. and their workman, which was received by the Central Government on the 17-7-1992

[No. L-20012(84)/89-I.R. (Coal-1)]

V. K. VENUGOPALAN, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

REFERENCE NO. 6 OF 1990

PARTIES :

Employers in relation to the management of Loyabad Coke Plant of M/s. B.C.C. Ltd.

AND

Their Workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers : Shri B. Joshi, Advocate, and Shri G. Prasad, Advocate.

For the Workmen : Shri S. Bose, Secretary, Rashtriya Colliery Mazdoor Sangh.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 9th July, 1992.

AWARD

The present reference arises out of Order No. L-20012/84-I.R. (Coal-I), dated the 11th January, 1990 passed by the Central Government in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the schedule to the said order and the said schedule runs as follows :

"Whether the action of the management of Loyabaud Coke Plant of M/s. Bharat Coking Coal Ltd. in keeping Shri Jawahar Paswan as Tub Checker w.e.f. 16-12-1984 without the benefits of the pay scale and regularisation is justified ? If not, to what relief is the workman entitled ?"

2. The dispute has been settled out of Court. A memorandum of settlement has been filed in Court. I have gone through the terms of settlement and I find them quite fair and reasonable. There is no reason why an award should not be passed on the basis of terms and conditions laid down in the memorandum of settlement. I accept it and pass an award accordingly. The memorandum of settlement shall form part of the award.

3. Let a copy of this award be sent to the Ministry as required under section 15 of the Industrial Disputes Act, 1947.

S. K. MITRA, Presiding Officer.

BEFORE THE PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,
NO. I, DHANBAD

Reference Case No. 6 of 1990.

Employers in relation to the Management of Loyabaud Coke Plant of M/s. Bharat Coking Coal Limited.

AND

Their Workman.

The humble petition of compromise on behalf of the parties most respectfully shewth :—

1. That, the Central Government by a notification has referred the instant industrial dispute for an adjudication under Section 10 of the Industrial Disputes Act, 1947 to this Hon'ble Tribunal. The schedule of the reference is reproduced below :—

SCHEDULE

"Whether the action of the management of the Loyabaud Coke Plant of M/s. BCCL in keeping Shri Jawahar Paswan as Tub Checker w.e.f. 16-12-1984 without the benefits of the pay scale and regularisation is justified ? If not, to what relief is the workman entitled ?"

2. That, the parties discussed the dispute out side the court and have settled the said dispute on the following terms and condition.

TERMS AND CONDITION

1. That, Shri Jawahar Paswan, DB Mazdoor will be regularised as Tub Checker in Clerical Grade III w.e.f. 1-1-1991 notionally. He will be notionally fixed in Clerical Grade III w.e.f. the aforesaid date but financial benefits will accrue from 1-1-1992.

2. That, this settlement resolves all the disputes between the parties and the workman concerned Shri Paswan shall have no claim whatsoever.

3. That, it was also agreed that seven copies of this settlement will be filed before the Hon'ble Tribunal and the Hon'ble Tribunal may be requested to give an Award in terms of the agreement.

It is, therefore, prayed that your Honour may be graciously pleased to accept the settlement and pass an Award in terms of the agreement.

And for this act of kindness the parties shall ever pray.

REPRESENTING UNION

Illegible.

Illegible.

Illegible.

REPRESENTING MANAGEMENT

Illegible.

Illegible.

Illegible.

WITNESS

Illegible.

ADVOCATE

Part of the Award

Illegible.

Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court (No. 1), Dhanbad.

नई दिल्ली, 20 जुलाई, 1992

का प्रा. 2143.—प्रौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार मैत्रीय सरकार भारतीय जीवन वीमन निगम के प्रबंधनसंघ के सदृश नियंत्रण और उनके कमीकारों के बीच, अनुबंध में निर्दिष्ट प्रौद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण, जयपुर के प्रबंधन को प्रकाशित करनी है, जो केन्द्रीय सरकार का 17-7-92 का प्राप्त हुआ था।

[गद्या प्रा. - 17012/11/84 - 3 - 4 (A)]

वी. के वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 20th July, 1992

S.O. 2148.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jaipur as shown in the Annexure in the Industrial dispute between the employers in relation to the Mgt. of LIC of India and their workmen, which was received by the Central Government on the 17-7-92.

(No. L-17012/11/84-DIV (A))

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

CENTRAL INDUSTRIAL TRIBUNAL, JAIPUR
Case No. CIT-82/84.

REFERENCE :

Government of India, Ministry of Labour, New Delhi
Order No. L-17012/11/84-DIV(A) dated 6-12-84.

Shri K. K. Bhansali S/o. Shri P. R. Bhansali resident of Green House, Veer Durgadas Nagar, C-30, Pali (Rajasthan). . . Petitioner.

Vs.

Senior Divisional Manager, L.I.C. of India, Divisional Office, Jeevan Prakash Ajmer. . . Non-petitioner.

PRESENT :

PRESENT

Hon'ble Judge Shri Jagat Singh Ji, R.H.J.S.

For the Petitioner.—Shri B. L. Samdaria

For the Non-petitioner.—Shri Manoj Sharma

Date of Award :

26th May, 1992.

AWARD

Government of India, Ministry of Labour, New Delhi has referred the following dispute under Section 10(1) (d) as well as 2A of the I.D. Act, 1947 for adjudication to this Court :

"Whether the action of the management of LIC of India, Ajmer in relation to their Branch Office, Pali (Raj.) in terminating the services of Shri K. K. Bhansali, Development Officer with effect from 27-10-83 is justified ? If not, to what relief is the workman concerned entitled."

2. The brief facts as per the statement of claim are that the petitioner Shri K. K. Bhansali was initially appointed as Development Officer L.I.C. Jodhpur on 10-6-1963 on probation for one year. Subsequently, he was reduced in rank to the post of Development Officer Grade II and in the year 1970 he was promoted to the post of Development Officer Grade I from 1-7-70. Since then the petitioner was serving in the capacity of Development Officer Grade I till the date of termination i.e. 27-10-83. The averments of the petitioner are that the Divisional Manager, LIC Ajmer issued a letter dated 5-6-80 regarding appraisal of the performance of the petitioner work for the appraisal year ended on 30-6-80. The said letter was illegal and ab-initio void because of it was pre-mature in view of the fact that the performance of the petitioner was to be judged upto 30-6-80 whereas this letter was issued on 5-6-80. It is further stated that in the same letter the Divisional Manager offered 15 days time to the petitioner to point out any inaccuracy in the figures relating to the performance of the petitioner. Subsequently by its letter dated 24-3-81 the Divisional Manager imposed the penalty of reduction of the conveyance allowance to 50% w.e.f. 1-7-80. According to the petitioner, the imposition of penalty was illegal, arbitrary and against the principles of natural justice because no opportunity of defence was accorded to him and no documents desired by the petitioner were furnished to him. Mr. Bhansali says that he made many representations against the letters dated 5-6-80 and 24-3-81 but of no avail because subsequently on 27-10-83 termination order was passed by the Zonal Manager L.I.C. New Delhi. The termination order is also illegal and without authority because of the fact that double penalty was imposed on the petitioner firstly reduction in conveyance allowance w.e.f. 1-7-80 and secondly termination of services w.e.f. 27-10-83. The Zonal Manager was also not empowered to issue the termination order. It was also alleged by the petitioner that before issuing the aforesaid orders, no chargesheet was issued to him nor any departmental enquiry was held against him as much as no opportunity to defend was accorded to him, nor desired and required documents and information were furnished to him resulting which the termination order was illegal. It was also averred that the petitioner was not paid any retrenchment allowance nor the provisions of the ID Act, 1947 were followed in letter and spirit. It is stated that since the termination order petitioner was unemployed and hence engulfed economic hardships. It is prayed that the termination order be set aside and he be reinstated with full back wages alongwith interest and costs.

3. The Senior Divisional Manager, LIC, Ajmer hereinafter referred as non-petitioner, has denied all allegations of the claim while raising some preliminary objections. As per the non-petitioner, this Court does not have jurisdiction to entertain the claim because the action sought to be challenged has been taken under Schedule III of the LIC (Staff VIIth Amendment Regulations) 1978. The aforesaid Regulations have been incorporated in Schedule III of the LIC of India (Staff) Regulation, 1960 and are statutory in character and have the force of law. The impugned action against the petitioner had been initiated and taken within the four-corners of the said statutory Regulations and therefore, the statement of claim is misconceived and not maintainable. The services of the petitioner have been terminated in conformity with the aforesaid regulations because these Regulations contain the work norms within the ambit of which the Development Officers have to work. The said work norms, as set out in Schedule III of the amended Regulations, had been gazetted in the Gazette of India dated 19th December, 1978 and the same have the force of law. The LIC Amendment Act, 1981 specifically provides that the Regulation and other provisions shall be deemed to be the rules framed by the Central Government. The validity of the amendment Act, 1981 has been upheld by the Appellate Court in the case of A. V. Nachne Vs. Union of India and others reported in AIR 1982 (SC) 1126. The second preliminary objection of the non-petitioner was that the present reference is barred by the principles of res-judicata because the petitioner has filed a writ petition bearing No. 984/82 entitled K. K. Bhansali Vs. Union of India and others wherein he had inter-alia raised substantially the same question based on the same allegations sought to be made in the present proceedings. The Hon'ble Court of Rajasthan Jaipur was pleased to dismiss the said writ petition filed by the petitioner who has not taken any further legal steps against the said order of Hon'ble High Court as such he is estopped from agitating the same points before this tribunal. According to the non-petitioner the apparent reasons for not resorting to further legal remedy is that a Division Bench of Rajasthan High Court in case of LIC vs. H. S. Chauhan and others appeal No. 272/82 vide its judgment dated 5th July, 1983 dismissed a batch of writ petitions filed by Development Officers allowing the appeal of LIC. The said Division Bench has clearly held that the Development Officers are not workmen under Section 2(s) of the I.D. Act, 1947. The non-petitioner Corporation has also averred that the conditions of service of a workman can be altered, varied and substituted through the legislation even assuming for the sake of arguments that the petitioner is a workman, the terms and conditions of his service stood substituted by the new terms and conditions by the LIC (staff VIIth Amendment Regulations) 1978, hereinafter referred to Regulations 1978, which are deemed to be the Regulations framed by the Central Government under Section 48 of the Life Insurance Corporation Act, 1956.

4. The next contention of the non-petitioner Corporation was that the petitioner having chosen the constitutional remedy by filing a writ petition under Article 226 of the Constitution of India, he is debarred to resort to remedy under the industrial law. According to the Corporation the petitioner had an alternate remedy by way of appeal under the Regulations, 1978 which he had not availed and this reference is pre-mature and not maintainable. The present reference is also bad in law on account of misjoinder and non-joinder of the parties as the termination order was passed by the Zonal Manager Northern Zone, who was a necessary party to the proceedings but the petitioner had neither impleaded him nor LIC of India Central Office.

5. Upon merits also, the non-petitioner Corporation has stated that the services of the petitioner were terminated by the Zonal Manager Northern Zone while exercising the power under the LIC of India Regulations, 1978 which are incorporated in Schedule III of the LIC of India Regulations, 1960 because the performance of the petitioner was extremely poor and uneconomic. Therefore, his retention in the service was prejudicial to the interest of the Corporation and its policy holders. The cost ratio of the petitioner for the last three appraisal years was found to be below the minimum cost ratio of 24%. For the appraisal year 30-6-78

the cost ratio was 40.6%, 30-6-79 the cost ratio was 34.8% and 30-6-80 it was 135.3%. The petitioner was, therefore, served with a show cause notice as to why his services should not be terminated which he did not explain and therefore, his failure to conform to the prescribed cost ratio was found to be devoid of merit and culminated into termination order. It was admitted that the petitioner was drawing the salary of Rs. 1445.60 paisa inclusive all allowances and he was working as a Development Officer class II but his duties were to develop and increase the production of new life Insurance business, to guide, supervise and direct the activities of agents, to recruit and train new agents, to act generally in such a way as to actise and motivate new agents, to render all services to policy holders as may be conducte to better policy servicing and to work in the area allotted to him as representative of the Corporation and the petitioner was not having any fixed hours of work and was not subject to daily control and discipline in above fields. His performance could be judged only with reference to the business brought in by him and it is for this reason that the Development Officers are allowed additional remuneration like conveyance allowance, additional conveyance allowance, incentive bonus, stationary and telephone facility which facilities are not available to other classes of employees. Some of the Development Officers have earned incentive bonus as High as over Rs. 1 lac per annum in addition to their monthly remuneration. The Development Officers are, therefore, a distinct class officer and are supervisory sales personnel of the Corporation and therefore, are not workmen under Section 2(s) of the I. D. Act. It is also stated that the petitioner was given due opportunity to explain his shortfall in his performance and was given enough time to achieve stipulated norms within the appraisal period. The various representatives received from the petitioner were duly replied. As the I.D. Act does not apply to the present case, no enquiry was required to be held because the action was taken under Schedule III and not under Regulation 39 of the LIC Staff Regulations 1960. The petitioner is deliberately confusing the whole matter because in terms of the provisions contained in Schedule III the Development Officer is required to be given an opportunity to make a representation in regard to his case before any action taken against him. Schedule III being a special provision for a distinct class employee and meant for specific purpose of appraising performance of class II officers vis a-vis controlling their cost ratio applies and operates in a limited field only. According to the afore stated schedule the petitioner was given adequate opportunity and his representation was duly considered by the authoriy and rejected being devoid of merits. He was asked to apply for the alternate employment under Staff Regulations 1978 but he has deliberately not applied to absorbed as a class III employee in the services of the Corporation therefore, he is out of job because of his conduct and abstinate attitude, resulting which the non-petitioner Corporation had to pass termination order dated 27-10-83 which is justified and the petitioner is not entitled to any relief.

5. In support of his claim the petitioner Shri K. K. Bhansali has examined himself and has submitted Ex. W-1 to W-28. In rebuttal the non-petitioner Corporation has submitted affidavit of Shri M. L. Kankariya who was cross examined by the learned representative of the petitioner. Ex. M1 to M-3 documents were also filed on behalf of the non-petitioner. Thereafter I perused the file at length and have heard the learned representatives of the parties.

6. Firstly I will deal with the preliminary objections raised by the non-petitioner. It is alleged that the petitioner being development officer and having supervisory functions such as to develop and increase the production of new life insurance, to guide and direct the activities of agents, to recruit and train new agents etc. the Corporaion also states that the Development Officers did not have fixed hours of work and not subject to daily control of office. Their performance is justified only with reference to the business they bring in the organisation and for which they are allowed additional like conveyance allowance, incentive bonus, stationary and telephone facility. The above averments of the non-petitioner Corporation have been proved by their witness Mr. M. L. Kankariya in his affidavit. The petitioner Shri K. K. Bhansali also admitted some of these averments in his cross examination. But mere aforesated averments

of the Corporation will not lead me to conclude that the petitioner is not a workman, because the Hon'ble Supreme Court in S. K. Verma vs. Mahesh Chand 1983 Lab. I.C. 1483 has held the Development Officer in Life Insurance Corporation as workman under section 2(s) of the I.D. Act. Therefore, in view of the aforesated autority of the Appex Court, it is needless to discuss the evidence produced by both the parties because the duties and functions of the development officer in LIC throughout is the same and therefore, the first preliminary objection of the non-petitioner is found devoid of force due to the aforesated Appex Court's decision.

7. Non-petitioner Corporation's second preliminary objection was that there was mis-joinder and non-joinder of parties as the impugned order dated 27-10-83 was passed by the Zonal Manager (Northern Zone) neither he was made a party nor the LIC of India Central Office. Though this preliminary objection was taken in the pleading but the learned representative of the Corporation failed to convince me that how they were prejudiced in the absence of the Zonal Manager as well as LIC of India Central Office. It is pertinent to mention that at the time of termination petitioner Shri Bhansali was Development Officer in Ajmer Division who had all the relevant record with him and, therefore, was made non-petitioner here. In this prospect, the reply of the non-petitioner is evident to show that all averments of the claim were fully replied at length supported by documentary evidence. Mr. M. L. Kankariya, who was examined on behalf of non-petitioner has also not stated anything in his affidavit which shows that in the absence of Zonal Manager as well as LIC Central Ofice they were not able to plead or disist the claim of the petitioner. The affidavit of Mr. Kankariya contain all minor details. He has been cross examined at length and was able to reply to all he questions put to him during the cross examination which leads me to conclude Zonal Manager as well as LIC Central Office was neither necessary party nor their absence was hinderance to the pleadings of the non-petitioner and, therefore, this preliminary objection of the non-petitioner is also devoid of force and hence rejected.

8. Another preliminary objection of the non-petitioner was that the present reference was barred by res-judicata because the petitioner has filed a writ petition No. 984/82 entitled K. K. Bhansali vs. Union of India and others wherein he has raised substantially the same question based on the same allegations as are sought to be made in the present proceeding. The Hon'ble High Court of Rajasthan was pleased to dismiss the said writ petition and the petitioner has not taken any further legal steps of filing DB appeal against this order as such he was estopped from agitating the same point before this Hon'ble tribunal. Shri Bhansali was cross examined in this respect who has admitted it that he had filed a writ petition in Rajasthan High Court which was dismissed by the Dy. Registrar due to mistake of his counsel. It was again suggested to Mr. Bhansali in cross examination that the writ petition was not dismissed due to the mistake of his advocate but was dismissed after due hearing. This suggestion was denied by the petitioner but admittedly the petitioner not filed any appeal against the dismissal order. It is strange that neither party has filed copy of the judgment of petition No. 984/82 without which it cannot be said whether it was dismissed in default or it was decided on merits and hence in the absence of judgment of the aforesated writ petition this court cannot held that the averments taken in that writ petition were similar to the dispote in hand and, therefore, this contention of the non-petitioner Corporation is also dismissed in the absence of documentary evidence.

9. Yet another contention of the non-petitioner was that the petitioner has not availed of the remedy of appeal against the impugned order as such the present reference is premature and un-maintainable. A suggestion in this respect was also put to Shri K. K. Bhansali in his cross examination to which his reply was that he had no faith in the Corporation and he was not expecting justice from them and, therefore, he has not availed the remedy of appeal. Be that as it may, even if the alternative remedy of appeal was not availed, the reference was not barred because out of the two remedies available to the petitioner he could choose

any of them. In this respect reference may be made to the judgment of *Jai Bhagwan vs. Management 1983 Lab. I.C. 1694* where also the similar objection was taken and the Hon'ble Supreme Court held as under :—

'Raising an industrial dispute is a well recognised and legitimate mode of redress available to a workman which has achieved statutory recognition under Industrial Disputes Act and this statutory recognised mode of redress should not be denied to a workman because of the existence of availability of another remedy. An Industrial Tribunal to whom a dispute has been referred for adjudication cannot refuse to adjudicate upon it and surrender jurisdiction which it undoubtedly to some other authority. The Tribunal to.....referred has no discretion to decide whether to adjudicate or not. Once a reference has been properly made to an Industrial Tribunal, the dispute has to be duly resolved by the Tribunal."

In view of the aforesated pronouncement of the Appex Court, this plea of the non-petitioner is also dismissed as being devoid of force.

10. The next contention of the non-petitioner Corporation was that in view of the Regulations 1978, and the rules framed thereunder, I.D. Act is not applicable to the parties. In this respect if the plea of Mr. Samdaria learned representative of petitioner is accepted and termination of petitioner is held to be retrenchment and if Section 25-F of the A.D. Act is made applicable then the impugned order will be termed as void ad-initio resulting which the petitioner will have to be reinstated with back wages as Development Officer class II which will defeat the very purpose/object of the Amended Staff Regulations 1978. In that case the Corporation will not be able to take any action against any of the Development Officers whose work norms during the preceding three years were below normal and uneconomic and against whom the Corporation has taken action under the Amended Staff Regulations 1978. It has been held by the various High Courts and Hon'ble Supreme court in lot of judgments that while interpreting a legislation judges ought to be more concern with the colour, contents and the context of the legislation in the interpretation of statutes. Regarding non-applicability of the I.D. Act in the present case, Mr. M.L. Kankariya, witness of the management states in para 12 of his affidavit that the service conditions of the Development Officer of LIC were governed by the Amended Staff Regulations 1960 in which schedule III relates to the Development Officers of the Corporation. In cross examination Mr. Kankariya has vehemently stated that termination was done under Schedule III. Again he has clarified in his cross examination that firstly the performance of the Development Officer is reviewed preliminarily and if his performance is not found up to the mark he is to be given a warning and thereafter if performance is not improved the annual grade increments can also be withheld. Mr. Kankariya had admitted that when the performance of Shri Bhansali was not found as per the 1978 work norms, his 50% conveyance allowance was withheld without holding any enquiry and without appointing any enquiry officer. The aforesated oral evidence of Mr. Kankariya makes it clear that the Corporation has proceeded against the petitioner under Regulations 1978. Oral statement of Mr. Kankariya is supported by the documentary evidence in the shape of letter issued by the Corporation to Shri Bhansali. Reference may be made to letter dated 5-6-80 Ex. W-1 which has specific mention of appraisal performance of the work of the petitioner is done under Schedule III of LIC Staff Regulations 1960 and the administrative instructions issued under it. Copy of this letter was produced by the petitioner himself. Ex. W-21 is the reply from the petitioner of Ex. W-2. Similarly Ex. W-2 and W-3 are also the letters of the Corporation issued to the petitioner which also clarify that the action has been taken under Schedule III of LIC Staff Regulations 1960. Ex. W-23 and 24 are the replied of the petitioner to the Corporation which also refers to Schedule III of Staff Regulations. Petitioner Shri Bhansali has also admitted all these documents. Shri K. K. Bhansali has examined himself also and when suggestive questions were put to him during the course of cross examination that his services were governed by the LIC VI Amended Staff Regulations 1978, firstly he avoided the question by saying that

in addition to the aforesated regulation he was also governed by the Staff Regulations 1960. Therefore, this is an admitted position that action against Shri Bhansali has been taken under the Amended Staff Regulations 1978. During the course of arguments the Sole objection of Mr. Samdaria, learned representative of the petitioner was that in addition to the aforesated Staff Regulations the petitioner was also governed by Regulation 39 of the LIC Staff Regulations 1960. According to Mr. Samdaria, though the termination order was under LIC VI Amendment Staff Regulations 1978, yet regulation 39 of the LIC Staff Regulations 1960 is also applicable because the disciplinary proceedings could have only been initiated under Regulation 39 and termination order was not because of any misconduct and hence retrenchment and therefore, I.D. Act was applicable and Section 25-F must have been applied with, which has not been complied with because neither notice of termination was given nor one month's pay in lieu thereof as much as retrenchment benefit was also not given. Reliance was placed on Punjab Land Development and Reclamation Corporation Lmt. vs. Labour Court 1990(3) S.C.C. 682 as well as on Factory Manager Central India Machinery Manufacturing Company Gwalior Vs. Naresh Chandra 1985 Lab. I. C. 941. Both these pronouncements deals with Industrial Disputes Act and termination thereunder without complying with the provisions of Section 25-F. In the case in hand, the contention of the non-petitioner is that in view of the Amended VI Staff Regulations 1978 I.D. Act is not applicable if the action is taken under Schedule III. In this respect A. V. Nachne vs. Union of India 1980 (i) LLJ. 110 can be gainfully referred in which Hon'ble Supreme Court was dealing with the LIC Amendment Act 1981 and similar objections were taken on behalf of the opposite party. In para 8 of the judgment the Hon'ble judges held that :

"It is true that after rules are made regarding the terms and conditions of service, the right to raise an industrial dispute in respect of matters dealt with by the rules will be taken away and to that extent the provisions of I.D. Act will cease to be applicable."

As in the case in hand, similar arguments were advanced in the Appex Court that there was no basis on which the employees of the Corporation could be said to form a separate class for denying the benefit of I.D. Act which was negated by the Hon'ble Court and it was held that Section 48(2c) read with Section 48(2)(cc) authorised the Central Government to make rule to carry out the purposes of the Act not with standing the I.D. Act or any other law. This means that of matters are governed by the rule the provisions of the I.D. Act or any other law will not be operative. In view of the pronouncement of the Appex Court, it is clear that when action has been taken under the rules, the same cannot be held inoperative or illegal because provisions of the I.D. Act were not complied with. I have already in my aforesated order, has made it clear that the impugned termination order dated 27-10-83 was made under VI Amended Staff Regulations 1978 because inspite of repreated reminders the cost ratio of the petitioner was below the required 50% norms.

11. Entering into the merits of the case the non-petitioner has specifically mentioned that cost ratio of three appraisal of the petitioner was found below 50%. The relevant appraisal years were 1-7-79 to 30-6-80, 1-7-78 to 30-6-79 and 1-7-77 to 30-6-78. According to Ex. M.1(b) in 77-78 the cost ratio was 44.5%, in 78-79 it was 34.8% and in 79-80 it was 135.3%. The average cost ratio of the preceding three appraisal years was 52.6%, i.e., more than 50%. The petitioner Shri K. K. Bhansali in his cross examination has been put suggestive question with regard to aforesated cost ratio, and he avoided the answer by saying that he does not remember it. Ultimately in his cross examination Mr. Bhansali has admitted that for the appraisal, year 79-80 his cost ratio was not up to the mark. When he was appointed to explain his cost ratio he had to admit that his cost ratio for 79-80 was 135.3%. This leads me to conclude that for the year 79-80 Shri Bhansali had admitted that it was 135.3% but with regard to remaining years i.e. 78-79 and 77-78 though specific questions were put to Mr. Bhansali in his cross examination for which firstly the petitioner objected the question by saying that it relates to the documentary evidence.

When the objection was set aside the petitioner avoided the reply by saying that he does not remember. This shows the conduct of the petitioner which is not fair. In this respect reference may be made to Ex. 2, a letter issued from the Corporation to the petitioner which shows that the aggregate of SFYPI in the three appraisal years immediately preceding the relevant appraisal date was 81,553.19 paisa and the aggregate of the annual remuneration in the three appraisal years was 42,896.23 paisa and therefore, the ratio of the aggregate of annual remuneration in the three years immediately preceding the relevant appraisal date of the aggregate of SFYPI in those three years was 52.6%. Ex. W-2, W-3, W-6 and W-8 are admitted by the petitioner. Ex. W-23 was written by the petitioner to the Corporation requiring some information with regard to SSS Policies. The Corporation through their letter dated 16-5-81 (W-6) replied to the petitioner that details of business done including premium figures has been given to him from time to time at the time of communicating the appraisal performance which had not been contested by him at that time. It was also told to the petitioner that while sending appraisal performance in respect of appraisal years ended on 30-6-80 vide letter No. 243-81, he was requested to go through the data contained in the appraisal sheets carefully and in case any discrepancies are noted the same may be pointed out within 15 days of the receipt failing which it would be presumed that the data contained has been accepted. The Corporation reminded Mr. Bhansali that he had not contested at this stage even then the Corporation was ready to afford the petitioner yet another opportunity to confirm the correctness of the figures communicated to him by letter W-6 and 15 days more time was given to the petitioner to give full particulars of any premium which has not been taken into account while calculating the appraisal performances. Even thereafter the petitioner could not give any figure to explain any deficiency in the appraisal report. Not to speak of the matter at the Corporation level, even during the investigation in this court, the petitioner has not given any oral or documentary evidence in support of his contention that his performance for the appraisal years 77-78 and 78-79 was above the required standard. Neither Mr. K. K. Bhansali has stated in his affidavit that he gave required business in the appraisal years 77-78, 78-79 according to Rule 1978 work schedule nor has he put any such suggestion during the cross examination of Corporation witness Shri Kankariya which leads me to conclude that in view of partly admission of the petitioner Shri K. K. Bhansali that his cost ratio for the appraisal year 79-80 was 135.3% and the evidence produced by the Corporation it is proved that the cost ratio of Mr. Bhansali for the appraisal year 1-7-77 to 30-6-78 was 40.4%, 1-7-78 to 30-6-79 was 34.8% and 1-7-79 to 30-6-80 was 135.3%. The average cost ratio of preceding these three appraisal years was 52.6% i.e. it was more than the required 50% as per the work norms of 1978. Mr. Samdaria, learned representative for the petitioner has submitted that even if the cost ratio of the petitioner for the three appraisal years was more than the required 50% before termination, petitioner must have been paid retrenchment benefit. I am not convinced with this plea either because as held by the Apex Court in A. V. Nachne's case that when the action has been taken under Schedule III of LIC VI Amendment Staff Rule 1978 then the provisions of Industrial Disputes Act are not applicable. Therefore, this plea of Shri Samdaria being devoid of force is rejected.

12. The last contention of the petitioner was that he had been serving the Corporation since 4-6-83 and his services were terminated on 27-10-83, therefore, he remained in the Corporation for more than 20 years and that now he is overage, therefore termination order was too harsh. In this respect, the plea of the Corporation was that they offered class III job to Mr. Bhansali which was not accepted by him. In this regard Mr. Kankariya Corporation witness has stated in para 15 of his affidavit that as per Staff Regulation 1960 Schedule III Shri Bhansali was asked to apply for class III post vide Ex-M-13 but Mr. Bhansali did not apply for that post. Similar suggestion was put to Mr. Bhansali in his cross examination to which he gave an evasive reply that he does not remember. During the course of the arguments also in this respect the petitioner has stated that

because the petitioner served the Corporation for more than 20 years as Development Officer class II and therefore, a man of his status will not like to serve the Corporation as Class III employee. In view of the aforesaid circumstances the Corporation was left with no alternative but dismissal of the workman.

13. No other argument was advanced before me by any of the parties. In view of the aforesaid legal and factual aspects of the case, I am of the view that termination of Shri K. K. Bhansali, Development Officer w.e.f. 27-10-1983 was justified and he was not entitled to any relief. Looking to the circumstances of the case parties will bear their own cost.

14. Let the award be sent to the Central Government for publication under Section 17(1) of the I.D. Act, 1947.

Sd/-

JAGAT SINGH, Presiding Officer

नई दिल्ली, 20 जून 1992

का. आ. 2149.—श्रीदौषिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुमति में, वेत्तीय सरकार, भैंडियन औवरसीज बैंक के प्रबंधसंस्था ने सब तीनों और उसके कर्मचारों के बीच, पश्चिम में निदिष्ट श्रीदौषिक विवाद में केन्द्रीय सरकार श्रीदौषिक अधिकारी, नई दिल्ली के वंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-92 को प्राप्त हुआ था।

[संस्कृता एवं - 12012/72/90 -आई आर (सी-II)]

की. के. वेणु गोपालन, डेस्क अधिकारी

New Delhi, the 20th July, 1992

S.O. 2149.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of Indian Overseas Bank and their workmen, which was received by the Central Government on the 16th July, 1992.

[No. L-12012/72/90-IR (B II)]
V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 21/91

In the matter of dispute between

Shri Mohan Bahadur and others through Shri S. B. Jain, National Executive Member, A.A.O.B.E.U. through Indian Overseas Bank, Gurdwara Road, Karel Bagh, New Delhi.

Versus

Zonal Manager,
Indian Overseas Bank,
Rachna Building,
Pusa Road,
New Delhi-8.

APPEARANCES :

Shri Rajinder Singh—for the workmen.
Shri R. Sethu Raman—for the management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12011/72/90-I.R. B-2 dated 19-2-91 has re-

ferred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of Indian Overseas Bank, New Delhi (Delhi region) in not regularising the services of the workmen as per Annexures A and B with retrospective effect is justified? If not to what relief the workmen are entitled?"

2. This case was fixed today for settlement when Shri Rajinder Singh representative for the workmen made state-

ment that the matter has been settled and No Dispute Award may be passed in this case. A memorandum of settlement dated 20-5-82 was also filed which is mark A. In view of his statement a No Dispute Award is passed in this case leaving the parties to bear their own costs of the dispute. Party shall remain bound by the settlement.

17th June, 1992.

GANPATI SHARMA, Presiding Officer

ANNEXURE 'A'

LIST OF EMPLOYEES WHO HAVE NOT BEEN CONFIRMED TILL DATE

Name	Present Branch	Date of first appointment
WATCHMEN		
1. Mohan Bahadur	Safdarjung Enclave	8-6-87
2. Beli Ram	Model Town	14-4-86
3. Budhi Bahadur	Regional Office	8-6-87
4. Shri Chand Ram	Janpath	17-1-86
5. Balbir Singh	Regional Office	15-4-88
6. Daya Chand	Regional Office	9-5-88
7. Bal Kishan	Regional Office	9-5-88
8. Chand Ram Tanwar	Janpath	17-1-86
MESSENGERS		
1. Govind Kumar	Clearing Office	28-9-85
2. Govindan	Regional Office	10-9-85
3. Raj Kumar	Staff Training Centre	4-12-85
4. Charan Singh	Connaught Place	26-2-86
5. Madan Lal Jorwal	Indore	Dec. 84
6. Jethu Singh	Chartola	11-6-83
7. Mrs. Shyam Kaur	Defence Colony	Dec. 86
8. Mrs. Joginder Kaur	Safdarjung Enclave	Dec. 87
9. Hanuman Prasad Meena	Kolihan Nagar	10-11-86
10. Ashwani Kumar	Safdarjung Enclave	10-3-86
DRIVER		
1. Vijender Singh	Regional Office	14-5-86

ANNEXURE 'B'

NAMES OF THE MEMBERS WHO HAVE NOT BEEN CONFIRMED FROM THE DATE OF FIRST APPOINTMENT

MESSENGERS :—

Name	Present Branch	Date of 1st appointment	Date of Confirmation
1. T. Paul Mary	Pt. Street	30-8-84	June 1989
2. Ramesh Chand	Zonal Office	13-8-84	-do-

1	2	3	4	5
3. Ram Niwas	R.K. Puram	20-9-84	-do-	
4. Dharmendra	Naraina	17-9-84	-do-	
5. Inderjeet Singh	STC	19-9-84	-do-	
6. Ashok Kumar	Rajouri Garden	27-9-84	-do-	
7. Prem Pal Singh	Daryaganj	24-9-84	-do-	
8. Suresh Manjhi	Karol Bagh	27-12-84	-do-	
9. Raj Bir Singh	Roop Nagar	29-10-34	-do-	
10. Ram Narain Jha	Karol Bagh	16-8-84	-do-	
11. Shankar Lal	Roop Nagar	25-10-84	-do-	
12. Suraj Bali	Golf Links	26-11-84	-do-	
13. Jaswant Singh	S. Enclave	7-11-84	-do-	
14. S.S. Negi	Delhi Cantt	27-11-84	-do-	
15. Ajit Singh	Foreign Exchange	21-8-85	July 89	
16. Gopal Singh	Janpath	5-7-82	2-2-88	
17. Suraj Bhan	Jaipur	20-12-83	31-1-89	
18. Sunil Kumar	Ajmer	1-6-85	June 89	
19. R.S. Yadav	Jaipur	28-10-85	-do-	
20. K.C. Chaudhary	Jaipur	17-12-85	-do-	
21. Amar Singh	Jabalpur	4-4-83	-do-	
22. Purshottam Bairagi	Ujjain	Dec. 85	-do-	
23. Rajesh Raikwar	Gwalior	Dec. 85	-do-	
24. Suresh S. Hardayal Ji	Indore	Dec. 85	-do-	
25. Brij Lal	Jabalpur	Dec. 85	-do-	
DRIVERS :				
1. Jagdish Chand	S. Enclave	1-5-86	Feb. 89	
2. Sri Lal	Pusa Road	28-4-86	-do-	
3. Jai Bhagwan Singh	Janpath	11-7-86	-do-	
4. Om Dutt	Regional Office	9-10-86	20-2-89	
5. S.V. Srinivasan	Karol Bagh	1-4-85	21-6-86	

नई विस्ती, 21 जुलाई, 1992

management of Bank of Maharashtra and their workmen, which was received by the Central Government on the 20th July, 1992.

[No. L-12012/502/88-D-II(A)]
V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, AT BOMBAY

PRESENT :

Shri P. D. Apshankar, Presiding Officer.

Reference No. CGIT-2/1 of 1989

PARTIES :

Employers in relation to the management of Bank of Maharashtra.

AND

Their workmen.

APPEARANCES :

For the Employer Shri R. M. Samudra, Representative.

New Delhi, the 21st July, 1992

S.O. 2150.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bombay as shown in the Annexure in the Industrial Dispute between the employers in relation to the

For the workmen: Shri Vinayak Karmarkar, General Secretary, Bank of Maharashtra Karmachari Sangh.
INDUSTRY: Banking. **STATE:** Maharashtra.
 Bombay, the 2nd July, 1992

AWARD

The Central Government by their Order No. L-12012/502/

88-D.2(A) dated 3-1-1989 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 :—

"Whether the action of the management of Bank of Maharashtra in terminating the services of Shri R. D. Tulaskar is justified? If not, to what relief is the workman entitled?"

2. The case of the workman Shri R. D. Tulaskar, as disclosed from the statement of claim (Ex. W/2) filed by the General Secretary of the Bank of Maharashtra Karmachari Sangh in short is thus :—

The service conditions of the Bank employees are governed by the Shastri Award, Desai Award and the different Bi-partite Settlements. The said workman Shri R. D. Tulaskar was initially appointed in the Bank's service as a full time sub staff at the Vasco-De-Gama, Goa branch on 7-4-1986. However he was discontinued from services on 5-6-1986, after he had completed 60 days' continuous service in the bank. In his place one another candidate by name Shri Mandrekar was appointed with effect from 7-6-1986 to 13-6-1986. The workman in question Shri Tulaskar was again reappointed from 16-6-1986 to 23-6-1986, and from 2-7-1986 to 7-7-1986. Thereafter some other person was appointed in service from 8-7-1986 to 15-7-1986, even though the workman Shri Tulaskar was available for service. From 1-8-1986 to 7-8-1986 some other candidate viz. Shri Mandrekar was appointed, and thereafter the workman in question Shri Tulaskar was reappointed in service from 8-8-1986 to 31-8-1986, and was discontinued from service. Same another candidate was appointed from 1-9-1986 to 18-9-1986 and he was thereafter discontinued from service. The workman in question Shri Tulaskar was again appointed for 2 days on 22nd and 23rd of September, 1986. Thus the services of the workman Shri Tulaskar were utilized by the bank at Vasco-De-Gama branch for more than 100 days during the period of 7-4-1986 to 23-9-1986 under the garb of temporary appointments. During the said period the services of another person viz. Shri Mandrekar were utilized for 40 days, even though the workman Shri Tulaskar was available. The services of the workman Shri Tulaskar were not utilized with a view not to allow him to complete the service of 140 days during the period of six months.

3. The workman Shri Tulaskar was appointed in permanent vacancy from 9-10-1986 at the Bandora branch of Goa. There were two employees of the sub-staff on permanent basis at

Bandora Branch viz., Shri M. A. Kumbhar and Shri L. A. Naik. The bank opened Shantadurga Sansthan Extension Counter, and there was a permanent vacancy at Bandora Branch which was filled in by appointing Shri R. D. Tulaskar from October 1986 onwards. Shri Tulaskar was appointed as substitute for Shri L. A. Naik, and was a probationer. As the said workman Shri Tulaskar was appointed in the permanent vacancy at Bandora Branch, he cannot be treated as a "Temporary Employee". However the bank had given artificial breaks to the workman not to allow him to complete the necessary number of days of his services. Ultimately the services of Shri Tulaskar were terminated by the bank with effect from 19-3-1987 illegally and without giving any notice regarding the termination of his services or without giving him the wages in lieu of notice as contemplated under para 522 of Shastri Award. As the workman Shri Tulaskar was a probationer, the bank should have given him one month's notice or wages in lieu of one month's notice before terminating his services. This was not done by the bank, and as such the termination of that workman is illegal and void-ad-initio. Even if the said workman was treated as a temporary employee, even then the bank should have given him 14 days notice before the termination of his services as per Clause 522 of the Shastri Award. This was not done by the bank. The illegal termination of the services of the said workman amounts to his retrenchment from services and falls within the scope of Section 25F read with Section 2(oo) of the Industrial Disputes Act, 1947. After the termination of the services of Shri R. D. Tulaskar from Bandora branch some other candidate was appointed in his place initially as a probationer and later on he was confirmed in the bank's services. This action on the part of the bank amounted to unfair labour practice. The said workman's services were not terminated because of any disciplinary action taken against him.

4. When the union learnt that the services of Shri R. D. Tulaskar were going to be terminated illegally along with other members of the sub-staffs by the bank, the union approached the Assistant Labour Commissioner and raised an Industrial Dispute before him. As the conciliation proceedings ended in failure the Central Government made the Reference as above. The said action on the part of the bank management is also in violation of the provisions contained in Section 33 of the Industrial Disputes Act, 1947. The Union therefore lastly prayed that this Tribunal should hold the action of the bank management in terminating the services of Shri R. D. Tulaskar as illegal and that the bank management be directed to reinstate him in service with full back wages and other benefits of services with effect from 19-3-1987.

5. The Assistant General Manager of the Bank of Maharashtra by his Written Statement (Ex. M/3) contested the said claim of the union and in substance contended thus :

The said workman Shri R. D. Tulaskar was never appointed in the bank's services in any clear and permanent vacancy. He did not also work continuously so as to claim the termination of his services as bad-in-law. In fact he worked on different dates during the period of 7-4-1986 to 9-4-1987 at three different branches of the bank in officiating capacity. He worked during the following period thus :

Sr. No.	Period of employment	Days	Place of work	Nature of Employment
1.	On different dates between April, 86 and December, 86	102	Vasco Br.	In the leave vacancy/due to absence of permanent substaff
2.	On different dates between Oct., 86 and April, 87	143	Bandora Br.	During leave vacancy of full time substaff & for making relieving arrangement for its extension counter
3.	2-4-87 to 11-4-1987	10	Marcaim Br.	In the leave vacancy of permanent substaff

6. The said workman had worked in the leave vacancy or because of the absence of a permanent sub-staff of the branches at Vasco-de-Gama and Marcaim, and as such he cannot claim the right to continue in service. The member of the sub-staff in whose leave period he was working had reported for duty. It was made clear in his appointment letter that on the expiry of the particular period, his employment will come to an end. The case of the said workman falls under Section 2(00) (bb) of the Industrial Dispute Act, and cannot be considered as the case of wrongful retrenchment.

7. The Bank Management further contended thus :—As per the policy of the bank, the appointment to the post of a full time sub-staff is to be made from and senior-most eligible part time sub-staff in the region. When the need for a filling-up the post of the full time sub-staff at Bandora branch arose on permanent basis, immediate steps were taken to fill in the vacancy and at that time the said workman Shri Tulaskar was working in the leave vacancy of some other person and was working purely on temporary basis. Shri Kolumbkar who was eligible for absorption as full time sub-staff member was posted to Bandora Branch, and the arrangement of temporary employment of Shri Tulaskar was discontinued. This action on the part of the bank was quite just, proper and legal. During the conciliation proceedings, the bank had offered the post of the part-time sub-staff member of the workman Shri Tulaskar which was subsequently to be absorbed as a full time sub-staff member at any of the branches of Goa, but this request was not duly considered by the workman and by the Union. During the conciliation proceedings before the ALC (Central) Vasco-de-Gama, several demands, including that of the workman Shri Tulaskar, were made by the Union. However the Union stated before the Conciliation Officer that they did not want to press for the demands of the employees except that of Shri Kumkerkar. Thus, the demand regarding the workman in question Shri Tulaskar was not pressed by the Union before the Conciliation Officer. However the union again went back, and pursued its demand before this Tribunal, which is unjust and illegal.

8. The bank management then contended thus:—It is not true that the bank had utilized the services of the workman Shri Tulaskar in such a way as not to allow him to complete his service period upto 140 days as alleged by the union. It is also not true that the said workman was appointed in the permanent vacancy at Bandora Branch. In fact he was appointed there provisionally to fill up a permanent vacancy. It is not true that the said workman had attained the status of a probationer. The said workman was fully aware that his appointment at different places was purely of temporary nature, and was to be over at the end of the particular period. The case of the said workman falls within the scope of Section 2(00) (bb) of the Industrial Disputes Act. As such it cannot be treated as illegal termination of his services. The bank management therefore lastly prayed for the rejection of the prayer of the union.

8(a) The Issues framed at Ex. 5 are :

- (1) Whether the termination of service of the workman Shri R. D. Tulaskar by the Bank management is illegal and unjustified?
- (2) Whether the said termination is in contravention of the provisions contained in Section 33 of the I. D. Act ?

- (3) Whether he is entitled to reinstatement in service ?
- (4) To what other reliefs, if any, he is entitled ?
- (5) What Award ?

9. My findings on the said Issues are :

- (1) No.
- (2) No.
- (3) No.
- (4) Nil.
- (5) Award as per below.

REASONS

ISSUE No. 1.

10. No oral evidence was led on behalf of either of the parties.

11. According to the union, the termination of the services of the said workman amounted retrenchment, and that he was illegally removed from the service, and as such he is entitled to reinstatement in service. However, I find that the case of the workman fell within the scope of Section 2(00) (bb) of the Industrial Disputes Act, 1947, as he was being appointed purely on temporary basis from time to time. I also find that there was no breach of the provisions contained in Section 33 of the Industrial Disputes Act, by the Bank Management. I find that the action of the bank management in question is quite just and proper as can be seen from the documentary evidence on record which is thus :

Ex. 13 is a copy of the appointment order dated 7-4-86 issued by the Vasco-de-Gama branch Manager of the bank to the workman Shri R. D. Tulaskar. This order clearly stated that the workman was appointed as a sub-staff on temporary basis during the temporary vacancy of the sub-staff post of the bank, on account of the leave taken by the regular sub-staff from 7-4-1986 to 26-4-1986. This order further stated that it ceases to be in effect from the date as mentioned above. It is thus quite clear that the said workman was appointed in the services of the bank for the abovesaid three weeks purely on temporary basis and he was to cease in services after the regular employee was to resume his duty. Similar appointment orders were issued to the workman by the bank from time to time, and as such, the appointment of that worker was purely on temporary basis. According to the union, the said workman was retrenched from the services of the bank. Section 2(00) of the Industrial Disputes Act, 1947, states that the "retrenchment" means the termination by the employer of the service of the workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action. However the definition of the term "retrenchment" further states that the said retrenchment does not include termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein. Therefore, in view of the specific wording of the appointment letter of the workman, as above (Ex. 13), and other appointment letters, the termination of the services of the workman clearly falls under Clause (bb) of Section 2(00) of the Industrial Disputes Act, and as such it cannot at all be stated that the said workman was retrenched from the services of the bank. As per the said appointment letter (Ex. M/13) the said workman was appointed in the services of the bank from 7-4-1986 to 26-4-1986 and after 26-4-1986 he had ceased in the services of the bank.

Ex. 14 is a chart prepared by the bank management showing the different dates and different periods during which the

said workman had served at the Vasco branch of the bank. The said chart is thus :

The dates on which Mr. R.D. Tulaskar worked at Vasco Branch.	No. of days worked	On whose absence the temporary substaff worked
7-4-86—30-4-86	24 days	(1) Shri L.G. Mandrekar on leave from 7-4-86 to 28-4-86 (2) Smt. S.J. Rane on leave from 28-4-86 to 12-6-86 Smt S.J. Rane (28-4-86 to 12-6-86) -do-
1-5-86—31-5-86	31 days	L.G. Mandrekar on leave from 16-6-86 to 23-6-86
1-6-86—5-6-86	5 days	R.D. Parwar On leave from 2-7-86 to 5-7-86
16-6-86—23-6-86	8 days	L.G. Mandrekar on leave from 1-8-86 to 30-8-86
2-7-86—5-7-86	4 days	L.G. Mandrekar on leave from 22-9-86 to 23-9-86
8-8-86—30-8-86	23 days	(1) R.V. Mhadikar on leave on 1-10-86 (2) L.G. Mandrekar on leave on 3-10-86 to 4-10-86 2-10-86 being holiday
22-9-86—23-9-86	2 days	L.G. Mandrekar on leave on 1-12-86
1-10-86—4-10-86	4 days	
1-12-86	1 day	
	102 days	

It is thus quite clear from this chart that during the period of 7-4-1986 to 1-12-1986, the said workman was being appointed on temporary basis in the leave vacancy of some other employees from time to time.

Ex. 15 is a letter dated 2-7-1988 by the bank officer of the Bandora branch to the A. G. Manager, Kolhapur. This letter also stated about the different periods during which the said workman had worked from 9-10-86 to 28-4-1987. It is seen from this letter that the said workman had served during the different periods in the leave vacancy of some other employee.

Ex. 16 is an application by the workman dated 1-1-1986 to get the post of temporary sub-staff. As such, the workman himself was quite well aware of the fact that he was to be appointed purely as a temporary employee in the bank.

Ex. 17 is a certificate issued by the branch manager of the Madkai branch stating that the said workman had worked as a temporary sub-staff from 2-4-1987 to 9-4-1987.

Ex. 18 is another appointment order dated 1-4-1987 issued by the manager of the Madkai branch to the workman. This order also, as stated above, clearly stated that he was being appointed as sub-staff on temporary basis during the temporary vacancy of sub-staff post on account of the leave vacancy by the regular sub-staff member during the period of 2-4-1987 to 11-4-1987. This order further stated that it was to cease in effect from the date mentioned above.

Ex. 19 is a copy of the minutes of the discussions held before the ALC on 25-7-1987. The issue regarding the services of the said workman Tulaskar and some other employees were discussed before the Conciliation Officer. The conciliation proceedings then stated that the management representatives had made a statement before the conciliation officer that most of the items were settled and resolved except the issue relating to the temporary employee Shri Kunrekar. These minutes further stated that the union representatives confirmed the contention of the management and stated that the union did not want to press the case further except that of Shri Kunrekar. It is thus clear from this proceeding held before the ALC on 21-7-1987 i.e. held 1 year after the termination of the workman's services, that the issue regarding reinstatement in services of the workman Tulaskar was not then pressed by the union. Therefore, the union should not have pursued the claim in the present Reference.

12. Ex. 20 is an advertisement appearing in the Daily Newspaper 'Gomantak' on 23-2-1990, i.e. after the present reference was made by the Central Government. By this advertisement, the applications were called for the post of the probationer from the persons of the Scheduled Tribe community. The workman did not state anywhere in his statement of claim that he is a member of Scheduled Tribe. Therefore the said advertisement is of no use to him.

Exs. 21 to 25 are the copies of the muster roll of the bank for the months of April, May, and October 1986 and April 1987. It is seen therefrom that the name of the said workman appeared in those muster rolls, and that he had attended for duties for some days in those months. It is thus quite clear from the above said different documents that the said workman was being appointed purely on temporary basis in the leave vacancy of some other regular employee, that his service period was to come to an end after the regular employee was to resume his duties, and as such, the appointments of the workman were of contractual nature from time to time and therefore the termination of his services did not amount to retrenchment, but that it fell within the scope of Section 2(oo) (bb) of the Industrial Disputes Act, 1947. According to the union, the bank management had committed a breach of the provisions contained in Section 33(1) of Industrial Disputes Act. Section 33(1) of the Industrial Disputes Act states that "during the pendency of any conciliation proceeding before a conciliation officer, no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of services applicable to him immediately before the commencement of such proceedings." I find that as the said workman was being appointed from time to time purely on temporary basis and on contractual basis, no prejudice was to be caused to that workman regarding those service conditions, even though he might have been removed from services during the pendency of the conciliation proceedings.

Ex. 19A is a copy of the strike notice dated 6-4-1987 by the Zonal Secretary of the union addressed to the bank manager. This notice stated that the union proposed to call a strike on 22-4-1987 or thereafter, as some of the workmen, including the workman Shri Tulaskar, were likely to be discontinued from the bank's services even though he had completed 240 days of service in the bank.

Ex. 8 is a copy of the minutes of the conciliation proceedings held on 23-4-1987 before ALC. On that day the

conciliation officer asked the management to keep the said workman Shri Tulaskar present on the next day of the proceedings to find out the true facts of his case.

Ex. 9 is a copy of the minutes of the conciliation proceedings held on 20-5-1987. The conciliation officer (ALC) made the observations on that day that the bank management had discontinued some of the employees working in clear vacancy during the pendency of the conciliation proceedings, and advised the management to maintain the status quo with a view to maintain the industrial peace. According to the union, the said workman was removed from services during the pendency of the conciliation proceedings, and as such, the bank management had committed a breach of the provisions contained in Section 33 of the Industrial Disputes Act, 1947. However, as the said workman was not working in any permanent vacancy, and was being appointed purely on temporary basis from time to time, no breach of the provisions contained in Section 33 of the Industrial Disputes Act, was committed by the Bank Management, as there was no question of the alteration of the service conditions applicable to that workman. In case the said workman was to be in the regular services of the bank, and he would have been removed from services during the pendency of the conciliation proceedings, then only a breach of the provisions contained in Section 33 of the Industrial Disputes Act, 1947, would have been committed. However, such is not the case in the present case.

Ex. 10 is a copy of the complaint dated 6-4-1988, (i.e. made about 1 year after the termination of the workman's services) of the Secretary of the Union to the ALC that the workman in question and some others were illegally retrenched from services.

Ex. 11 is a copy of the letter (complaint) dated 30-7-1988 by the union to the ALC stating that the said workman be deemed to be in the services of the bank from the date he was retrenched from services, and that he be allowed to resume his duties and he be paid his back wages. However, as noted above, there was no question of reinstating the said workman in service as he was not retrenched from the bank's services illegally. I, therefore, find that no breach of the provisions contained in section 33 of the Industrial Disputes Act was committed by the Bank Management.

13. The Union has relied upon certain case-law. However those cases referred to by the union in their written argument do not apply to the facts of the present case. According to the union, the said workman had attained the status of a probationer. As per para 23.15 of the Desai Award, a probationer means an employee who is provisionally employed to fill a permanent vacancy or post, and has not been made permanent or confirmed in services. From the documentary evidence on record, I do not find that the said workman was employed at any time to fill any permanent vacancy, and as such, he was not a probationer at any time. Therefore, there was no question of giving him one month's notice before terminating to his services.

14. According to the Union, even assuming that the said worker was a temporary employee, still 14 days' notice should have been given to him before the termination of the services by the bank management as contemplated under sub-clause 4 of para 522 of the Shastri Award. As per that sub-clause 4 of para 522, "The services of any employee other than a permanent employee or probationer, may be terminated, and he may leave service, after 14 days' notice. If such an employee leaves service without giving such notice he shall be liable for a week's pay". Thus as per that sub-clause 4 of para 522, the burden of giving 14 days' notice is cast upon a temporary employee, and no such burden is cast upon the management of giving 14 days' notice before terminating the services of a temporary employee. As such, no 14 days' notice was essential in the present case by the bank management to the employee in question. According to the union, the workman's case is governed by para 20.8 of the Bipartite Settlement which states that "a temporary workman may also be appointed to fill a permanent vacancy provided that such temporary appointment shall not exceed a period of 3 months during which the Bank shall make arrangements for filling up the vacancy permanently. If such a temporary workman is eventually selected for filling up the vacancy, the

period of such temporary employment will be taken into account as part of his probationary period." As noted above, the said workman was not appointed at any time to fill a permanent vacancy, and as such the provisions of para 20.8 do not apply to his service conditions. According to the union, the said workman was in services of the bank management for more than 240 days during 12 calendar months, and as such, he was entitled to 1 month's notice or wages of one month in lieu of notice, and to the retrenchment compensation. Even assuming that the said worker was in service of the bank management for more than 240 days during 12 calendar months, I find that he was not entitled to one month's notice or one month's pay in lieu of notice and to the retrenchment compensation, as he was not retrenched from the bank services, but that his contractual appointment was being terminated from time to time, and that his case fell within the scope of Section 2(oo)(bb) of the Industrial Disputes Act, and hence the termination of his services was not illegal.

15. Therefore, for the reasons mentioned above, I find that the termination of the services of the said workman by the bank management was not illegal and unjust, and that the such termination was not also in contravention of the provisions contained in Section 33 of the Industrial Disputes Act 1947. As such, he is not entitled to reinstatement in services, nor is he entitled to any other relief.

Issues Nos. 1 to 4 are found accordingly.

16. The following Award is therefore passed.

AWARD

The action of the management of Bank of Maharashtra in terminating the services of Shri R. D. Tulaskar is just proper and legal.

The parties to bear their own cost of this Reference.

P D AP SHANKAR, Presiding Officer

नई दिल्ली, 22 जुलाई, 1992

का. आ. 2151.—औद्योगिक विवाद अधिनियम, 1947 (1947 वा 14) की धारा 17 के अनुसार मेरीप्रति सरकार मेरा भाग की दिल्ली नियमिती के प्रबंधन के सबद्ध नियाजना और उनके कर्मकारों के बीच, अनुबंध मेरीप्रति विवाद मेरीप्रति सरकार औद्योगिक अधिनाय (म. 1) प्रबंधन के प्रत्येक कानूनिक कानून द्वारा दिल्ली नियमिती का 17-7-92 का प्राप्त हुआ था।

मध्या पा-20012(91)/90-शाही अता (कोटा-1)
की. के. वेनुगोपालन, उप्रक्रम प्रधिकारी

New Delhi, the 22nd July, 1992

S.O. 2151.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1) Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to Bhatdeo Colliery of M/s. Bharat Coking Coal Ltd. and their workmen which was received by the Central Government on the 17-7-92.

[No. L-20012(91)/90-IR(Coal-I)]
V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under Sec. 10(1)(d) of the Industrial Disputes Act, 1947
Reference No. 108 of 1990

PARTIES :

Employers in relation to the management of Bhatdeo Colliery of M/s. B.C.C. Ltd.

AND

Their workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.
APPEARANCES :

For the Employers—Shri B. Joshi, Advocate.
For the Workmen—Shri D. Mukherjee, Secretary, Bihar Karmgar Union.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 9th July, 1992

AWARD

The present reference arises out of Order No. L-20012(91)/90-L.R.(Coal-I), dated 20-8-1990 passed by the Central Government in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the schedule to the said order and the said schedule runs as follows :

"Whether the management of Bhatdeeh Colliery in Mohuda Area No. II of M/s. Bharat Coking Coal Ltd. is justified in dismissing from service Shri Chota Gaffur Mia, ex-Haulage Khalasi w.c.f. 8/10-6-89?"

2. The dispute has been settled out of Court. A memorandum of settlement has been filed in Court. I have gone through the terms and settlement and I find them quite fair and reasonable. There is no reason why an award should not be passed on the basis of terms and conditions laid down in the memorandum of settlement. I accept it and pass an award accordingly. The memorandum of settlement shall form part of the award.

3. Let a copy of this award be sent to the Ministry as required under section 15 of the Industrial Disputes Act, 1947.

S. K. MITRA, Presiding Officer

BEFORE THE PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I, DHANBAD

Ref. No. 188/90

Employers in relation to the management of Bhatdeeh Colliery.

AND

Their workmen.

PETITION OF COMPROMISE

The humble petition on behalf of the parties to the above reference most respectfully shewth :—

1. That the above dispute has been amicably settled between the parties on the following terms :—

TERMS OF SETTLEMENT

- (a) That the concerned workman Shri Chhota Gafur Mia will be taken back in employment without back wages but with continuity of service for the purpose of gratuity.
- (b) That the idle period on account of dismissal from 10-6-89 till the date of resumption of duty will be treated as dies non.

2. That in view of this settlement there remains nothing to be adjudicated.

Under the facts and circumstances stated above the Hon'ble Tribunal will be graciously pleased to accept the settlement as fair and proper and be pleased to pass the Award in terms of the settlement.

For the workmen

Sd/-
(B. MOHANTHY)
Area Secy. BCKU, Mohuda Area
10-6-92

For the Employers
Sd/-

(M. M. BHATTACHARYA),
General Manager, BCKU, Mohuda Area.

Sd/-

(A. K. RAO),

Dy. Chief Pers. Manager,
BCKU, Mohuda Area.

गद्द दिल्ली, 22 जुलाई, 1992

का. आ. 2152.—औषधिक बिबात मधिनियर, 1947 (1947 का 14) की धारा 17 के प्रत्यासरण में, केन्द्रीय सरकार, मैसर्स भारत कोकिं कोल नि. का जीलगोगा सेन्ट्रल इंस्पिट्टर के प्रबन्धनेत्र में सब्द नियोजकों और उनके कर्मकारों के बीच, प्रत्युत्तम में नियिष्ट औषधिक बिबात में केन्द्रीय सरकार औषधिक अधिकरण, (स. 2) धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार की 20-7-92 की घास द्वाया था।

[संख्या ए-24012 (16)/85 - डी 4 (रा)]

वी. के. वेणुगोपालन, हेस्क अधिकारी

New Delhi, 22nd July, 1992

S.O. 2152.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2) Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Jealgora Central Hospital of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on the 20-7-92.

[No. L-24012(16)/85-D.IV(B)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri Shri B. Rau, Presiding Officer.

In the matter of an industrial dispute under Sec. 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 109 of 1985

PARTIES :

Employers in relation to the management of Jealgora Central Hospital of M/s Bharat Coking Coal Ltd and their workmen.

APPEARANCES :

On behalf of the workmen—Shri S. Bose, Secretary, R.C.M.S.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the Dhanbad, the 10th July, 1992

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012(16)/85-D.IV(B), dated, the 22nd July, 1985

SCHEDULE

"Whether the action of the management of Jealgora Central Hospital of M/s. Bharat Coking Coal Ltd. Bhowra Area No. XI, P.O. Bhowra, Distt. Dhanbad in stopping Shri Ratan Kumar Paswan, Dresser

from service with effect from 29-11-81 is justified? If not, to what relief the workman is entitled?"

2. In this case both the parties appeared and filed their respective W.S. documents. Thereafter several adjournments were granted to the parties. Subsequently at the stage of oral evidence both the parties appeared before me and filed a petition of compromise. I heard both the parties on the said petition of compromise and I do find that the terms of compromise are fair, proper and beneficial to both of them. Accordingly I accept the said petition of compromise and pass an Award in terms thereof which forms part of the Award as Annexure.

B. RAM, Presiding Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 AT DHANBAD

Reference No. 109/85

Employers in relation to the management of Jealgora Colliery

AND

Their workmen.

Petition of Compromise

The humble petition on behalf of the parties to the above reference most respectfully shewth:—

1. That the above dispute has been amicably settled between the parties on the following terms:—

Terms of Settlement

- That without prejudice to their respective contentions, the management has already provided employment to the concerned workman as miner/loader (MCL) with effect from 16-4-88.
- That the concerned workman will appear in an interview before a Committee to be constituted to adjudicate his suitability for his appointment in the post of a Dresser (T) in the hospital.
- That the concerned workman will be appointed as a Dresser (T) if he will be selected by the Selection Committee and he will be fixed in scale of pay as per post he will hold with protection of his wages in Group V A which is highest for miner/loader.
- That the concerned workman Sri Ratan Kumar Paswan will not claim any wages or benefit for the period prior to his joining his duty on 16-4-88 as miner/loader.

2. That in view of the above settlement there remains nothing to be adjudicated.

Under the facts and circumstances stated above the Hon'ble Tribunal will be graciously pleased to accept the settlement as fair and proper and be pleased to pass the Award in terms of the Settlement.

For the workman

Sd/-
N. D. Pandey,
Vice President—RCMS/
Member: Joint Committee.

For the Employer

Sd/-

(A. K. Paul),

Agent, Jealgora Colliery

Sd/- Illegible

(B. Pd.) Dy. CPM Bhowra Area.

Witnesses:

Sd/- Illegible

मई दिनी, 23 अगस्त, 1992

पा. पा. 115:—शीघ्रेविन निवार अधिकार, 1947 (1947 का 14) की पाता 17 के अनुसार सें. देश्वीर मानार, मैट्टू भारत कंपनी 1964 GI/92—4

कोल लि. का मीरा लैन, जीलगोरा कोलियरी के प्रबन्धस्त्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच, मनुवंश में निविल भौतिकी विवाद में केंद्रीय सरकार भौतिकी विवाद (स 2) धनबद के पंचाट को प्रकाशित करती है, जो केंद्रीय सरकार का 20-7-92 को प्राप्त हुआ था।

[संख्या एल—24012/(3)/83—दी—4 (सी)]
दी के. वेनुगोपालन, ईस्ट भ्रिकारी

New Delhi, the 23rd July, 1992

S.O. 2153.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Jealgora Colliery Bhowra Area of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on the 20-7-92.

[No. L-24012(3)/83-D IV(B)]
V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri B. Ram, Presiding Officer

In the matter of a reference under Sec. 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 44 of 1983

PARTIES:

Employers in relation to the management of Jealgora Colliery, Bhowra Area of Messrs Bharat Coking Coal Limited, P.O. Bhowra, Dist. Dhanbad and their workmen.

APPEARANCES:

On behalf of the workmen—Shri S. Bose, Secretary, RCMS Dhanbad.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the 10th July, 1992

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the ID Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012(3)/83-D JV(B), dated the 7th May, 1983.

SCHEDULE

"Whether the demand of the workmen of Jealgora Colliery Bhowra Area, Messrs Bharat Coking Coal Limited, Post Office Bhowra, District Dharbad that Shri B. N. Chakravorty, Magazine Clerk should be promoted to clerical grade-I from the date his juniors have been promoted is justified? If so, to what relief is the said workman entitled?"

2. In this case both the parties appeared and filed their respective W.S. documents. Thereafter the case proceeded along its course. Subsequently at the stage of oral evidence, both the parties appeared before me and filed a petition of compromise. I heard both the parties on the said petition of compromise and do find that the terms contained therein are fair and proper. Accordingly I accept the same and pass an Award in terms thereof which forms part of the Award as Annexure.

B. RAM, Presiding Officer.

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 AT DHANBAD

Reference No. 44/83

Employers in relation to the Management of Jealgore Colliery.

AND

Their workmen.

Petition of Compromise

The humble petition on behalf of the parties to the above reference most respectfully shewth :—

1. That the above dispute has been amicably settled between the parties on the following terms :—

Terms of Settlement

- (a) That the concerned workman Sri B. N. Chakraborty was promoted to Clerical Grade-I with effect from 26-4-82 whereas some of his juniors were promoted to Clerical Grade-I with effect from 31-12-81. The management has agreed to give notional seniority and grade to the concerned workmen in Grade-I with effect from 31-12-81 and the seniority list will be revised accordingly.
- (b) That the concerned workmen will not claim for fixation his pay as on 31-12-81 and consequent difference of wages and will be content to get his grade-I scale only from 26-4-82 when he actually gained that post.
- (c) That this settlement finally resolves all disputes relating to this case.

2. That in view of the above settlement there remains nothing to be adjudicated.

Under the facts and circumstances stated above the Hon'ble Tribunal will be graciously pleased to accept the settlement as fair and proper and be pleased to pass the Award in terms of the Settlement.

For the workmen

Sd/-

(G. D. Pandey),
Vice President/CMS/
Member, Joint Committee.

Witnesses :

- 1. Sd/- Illegible
- 2. Sd/- Illegible

For the Employer
Sd/-
(A. K. Paul),
Agent,
Jealgore Colliery.
Sd/-
Dy. C.P.M.,
Bhowra Area

मई दिल्ली, 23 जुलाई, 1992

का आ 2154.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के प्रत्यामरण में, केन्द्रीय सरकार, मैसर्स भारत कोकिंग कोल लि. की कुमुण्डा कोलियरी के प्रबन्धतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, इन्दौर में विविध औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2) घनवाद के पंचपट को प्रकाशित गया है, जो केन्द्रीय सरकार को 20-7-92 को प्राप्त हुआ था।

[मंशा नं. - 20012(276)/90-आई शार (कोल-1)]
वी. के. वेणुगोपालन, ईम्प क्रिकिटर

New Delhi, the 23rd July, 1992

S.O. 2154.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Kusunda Colliery of M/s. Bharat

Coking Coal Ltd. and their workmen, which was received by the Central Government on 20-7-1992.

[No. L-20012(276)/90-IR (Coal-I)]
V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947

Reference No. 47 of 1990

PARTIES :

Employers in relation to the management of Kusunda Colliery of M/s. B.C.C. L. and their workmen.

APPEARANCES :

On behalf of the workmen—Shri S. N. Dev, authorised representative.

On behalf of the employers—Shri B. Joshi, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dhanbad, the 10th July, 1992

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. 20012/275/90-IR (Coal-I) dated, the 18th December, 1990.

SCHEDULE

"Whether the action of the management, Kusunda Colliery of M/s. BCCL, P.O. Kusunda, Dist. Dhanbad in dismissing Shri Somar Turi, Miner/Loader from the service of Co. is justified ? If not to what relief the workman is entitled ?"

2. In this case both the parties appeared but did not file their respective W.S. Subsequently when the case was fixed both the parties appeared before me and filed a petition of compromise. I heard both the parties on the said petition of compromise and I do find that the terms contained therein are fair, proper and beneficial to both of them. Accordingly I accept the said petition of compromise and pass an Award in terms thereof which forms part of the Award as annexure.

B. RAM, Presiding Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 AT DHANBAD

Reference No. 1/54/90-E-5 of 1990

Employers in relation to the management of Kusunda Colliery.

AND

Their workmen.

Petition of compromise

The humble petition on behalf of the parties to the above reference most respectfully shewth :—

1. That the Central Government by Notification No. L-20012/275/90-IR (Coal-I) dated 18-12-90 has been pleased to refer the present case to the Hon'ble Tribunal for adjudication on the issue contained in the schedule reference which is reproduced below :—

SCHEDULE

"Whether the action of the management, Kusunda Colliery of M/s. BCCL, P.O. Kusunda, Dist. Dhan-

bad in dismissing Sri Somar Turi, Miner/Loader from the services of the Company is justified ? If not, to what relief the workman is entitled ?"

2. That the above dispute has been amicably settled between the parties on the following terms :—

Terms of settlement

- That the concerned workman Sri Somar Turi, ID Card No. 94045 will be reinstated on his original job of Miner/Loader within 15 days from the date of his reporting for duty.
- That the period of idleness with effect from 23-10-87 till the date of his joining duty will be treated as leave without wages and his continuity of service will be maintained. Neither concerned workman nor any person or union acting on his behalf, will claim wages, bonus or any benefit for the period from 23-10-87 till the date of joining on his duty. The idle period will be treated as dies-non.
- That, in case, the concerned workman does not report for his duties within 60 (Sixty) days from the date of publication of the Award to be passed in this case for any reason whatsoever, he will not be entitled to any relief.

3. That in view of the above settlement there remains nothing to be adjudicated.

It is, therefore, humbly prayed that the settlement may kindly be accepted as fair and proper and Award may be passed in terms of the settlement.

For the Workman :

1. Sd/-	1. Sd/- Illegible
2. Sd/-	2. Sd/- Illegible

For the Employer :

1. Sd/-	1. Sd/- Illegible
2. Sd/-	2. Sd/- Illegible

महं विल्ली, 23 जुलाई, 1992

का. ना 2155.—बौद्धिक विदाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के मनुग्रहण में, केंद्रीय सरकार, मै. भारत कोकिंग कोष लि. ये दुदा कोल वाणी के प्रबन्धनतंत्र के सबूत नियोजकों शीर उनके कर्मकारों के बीच, मनुवंश में निविष्ट बौद्धिक विदाद में केंद्रीय सरकार बौद्धिक अधिकरण (सं. 1) धनवाद के पंचाट को प्रकाशित करती है, जो केंद्रीय सरकार को 20-7-92 को प्राप्त हुआ था।

[संख्या एल-20012 (154) 88 ई 3(ए) भार्या भार (कोल-1)]
धी. के वेणुगोपालन, डेस्क प्रधिकारी

New Delhi, the 23rd July, 1992

S.O. 2155.—In pursuance of Section 17 the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Dugda Coal Washery of M/s. Bhafat Coking Coal Ltd. and their workmen, which was received by the Central Government on 20-7-1992.

[No. L-20012(154)/88-D.III(A)/IR (Coal-1)]
V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947
Reference No. 258 of 1990

PARTIES :

Employers in relation to the management of Dugda Coal Washery of Central Coal Washeries Organisation, M/s. B.C.C. Ltd.

AND
Their Workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers—Shri R. S. Murthy, Advocate.

For the Workmen—Shri B. Lal, Advocate and Shri D. K. Verma, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dated, the 13th July, 1992

AWARD

By Order No. L-20012(154)/88-D.III (A)/I.R. Coal-I, dated the 22nd October, 1990, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the Management of M/s. B.C.C. Ltd. in relation to Dugda Coal Washery P.O. Dugda, Dist. Giridih (Bihar) is justified in terminating the services of 64 workmen detailed in annexure w.e.f. 1-11-87 through the contractor M/s. Durga Enterprises, P.O. Dugda, Dist. Giridih (Bihar) ? If not to what relief the concerned workman is entitled ?"

ANNEXURE

LIST OF PLANT CLEANING WORKMEN OF DUGDA COAL WASHERY

- Shri Gopal H. D.
- Shri Kali Charan Manjhi
- Shri Ram Prit Manjhi
- Shri Ram Sagar Manjhi
- Shri Sudhir Manjhi
- Shri Ram Nath Murmu
- Shri Birsa Manjhi
- Shri Daroga Prasad
- Shri Babu Lall Burnawal
- Shri Awadh Bihari Chand
- Shri Hem Chand Manjhi
- Shri Mahadeo Chatterjee
- Shri Ram Asray Prasad
- Shri Birendra Prasad
- Shri Rewat Lal Mahto
- Shri Laxman Prasad
- Shri Mahendra Singh
- Shri Raj Kumar Sharma
- Shri Indra Deo Singh
- Shri Dhan Raj Mahto
- Shri B. K. Shyamal
- Shri Budhan Mahto
- Shri Bharat Mahto
- Shri Ravi Lall Mahto
- Shri Promod Kumar Singh
- Shri Shyam Lall Prasad
- Shri Paras Nath Singh
- Shri Raju Prasad
- Shri Ram Lall Ram
- Shri Ram Deo Rai
- Shri Sucha Singh
- Shri Rup Lall Mahto No. 1
- Shri Bhagirath Mahto
- Shri Anurit Das
- Shri Chaltu Mahto
- Shri Sarju Mahto
- Shri Arun Kumar Mishra
- Shri Awadhesh Prasad Singh
- Shri Manager Choudhary
- Shri Ombir Singh
- Shri Bihari Prasad
- Shri Jiwan Kumar Goswami
- Shri Ramesh Turi
- Shri Sunil Prasad
- Shri Ram Deo Lall
- Shri Kailesh Mahto
- Shri Mahabir Mahto
- Shri Ramji Prasad

49. Shri Tota Ram Mahto
 50. Shri Sunil Kumar Singh
 51. Shri Maharsi Mishra
 52. Smt. Sundari Devi
 53. Shri Krishna Yadav
 54. Shri Nav Kant Jha
 55. Shri R. B. Tiwari
 56. Shri Rup Lall Mahto II
 57. Shri Suraj Deo Singh
 58. Shri Sheo Shaanker Singh
 59. Shri Gulab Chand Chowhan
 60. Shri Baban Prasad
 61. Shri Tun Tun Ram
 62. Shri B. P. Singh
 63. Shri Sri Ram Giri
 64. Shri Tulsi Gahlot

2. The case of the management of M/s. B.C.C. Ltd. in relation to Dugda Coal Washery, P.O. Dugda, Dist. Giridih (Bihar), as disclosed in the written statement-cum-rejoinder detailed apart, is as follows :

There exists no valid industrial dispute in present reference case within the meaning of Section 2(k) of the Industrial Disputes Act, 1947. There was no relationship at any time of employer—employee between the management of Dugda Coal Washery and the concerned persons. Dugda Coal Washery previously belonged to Hindustan Steel Ltd. which was succeeded in early 1970's by Steel Authority of India Ltd. The Hindustan Steel Ltd./Steel Authority of India Ltd. (in short SAIL) also owned two other washeries besides Dugda Coal Washery, namely, Pathardi Coal Washery, located in the district of Dhanbad and Bhojudih Coal Washery, located in Purulia district of West Bengal. The Administrative Office of all these washeries is located at Saraidella in Dhanbad district and the entire organisation including the washeries is called Central Coal Washerries Organisation. The management of the aforesaid washeries including Dugda Coal Washery which has two units was entrusted by SAIL to B.C.C.L. in 1972 under a power of attorney following nationalisation of coking coal mines and the establishment of Bharat Coking Coal Ltd. Ultimately the ownership of all these washeries including the administrative office at Saraidella was transferred by Steel Authority of India Ltd./Central Government to Bharat Coking Coal Ltd. with effect from 1-10-1983. H.S.L., SAIL and B.C.C. Ltd. are government companies under Section 617 of Companies Act and wholly financed by the Central Government. M/s. B.C.C. Ltd. is a subsidiary company of holding company styled Coal India Limited which was established with effect from 1-11-1974 following reorganisation of Coal Industry in the Central Public Sector including the nationalised coking and non-coking coal mines. The purpose for which the aforesaid Coal Washerries were established was to provide washed coal of the required specification to steel plants of the erstwhile H.S.L. and SAIL after beneficiation of raw prime coking coal produced by the collieries of M/s. B.C.C. Ltd. and fed into washeries. Dugda Coal Washery finds necessity of engaging contractors for some hard jobs of temporary nature of short duration. These jobs do not require permanent work force nor are they of continuous or perennial nature. In the process of working of the washeries including Dugda Coal Washery, there occurs spillage of coal from the conveyor belts etc. and it has to be collected and put back on to the conveyors. These jobs were being performed by the workmen engaged by the contractor and the said job was departmentalised on 26-5-80. At different times and in different spells the management found it necessary to set the following jobs executed through a contractor considering the nature of job which was purely temporary and not of permanent or continuous in nature :

(i) Re-handling of coal, debries and slurry etc. from D-I/II plants,
 (ii) Re-handling of washed coal from D-I/II plants.

(iii) Re-handling of coal, stones, fines and debries,
 (iv) Re-handling of raw coal, stones, debries etc.,
 (v) Re-handling of coal debries and stone etc.

The contractor so engaged obtained licence for the execution of the above job when Dugda Coal Washery was registered for employment of contract labour under the Contract Labour (Regulation and Abolition) Act, 1972. The above jobs were not promoted at any time under the Contract Labour (Regulation and Abolition) Act. The Enforcement Authorities of Labour Ministry had been inspecting the washery for ensuring compliance of the provisions of Contract Labour (Regulation and Abolition) Act by the management as well as contractors and they have found at no time any default in this respect, otherwise the contractors/management would have been prosecuted for any violation under the said Act. The jobs mentioned above were executed by the contractor concerned at different times and in different spans and that too for short duration. On the first occasion M/s. Dugda Enterprises a contractor, was entrusted with some job with effect from 5-9-80 and the last contract awarded to the said contractor expired on 31-10-87. After October, 1987 the management did not find it necessary to engage any contract labour for the aforesaid job. The management has statutory right to engage contract labour on the jobs mentioned above and the said Act does not cast any liability on to the management/principal employer to provide employment to the ex-workers of an ex-contractor after he ceased to execute any contract job for the management. The management also do not require the services of the persons referred to in the annexure to the reference order and it has no work for such persons. Since the persons concerned were never employed by the management the question of management terminating their services does not arise and there is no question also of the management being called upon to justify such action. The contractor was at liberty to engage his own men and terminate their services according to his requirement. He was paying wages to his workmen and providing them with necessary implements. He was directing and supervising the work of the persons engaged by him. The management was not at all concerned with such action of the contractor concerned. The contractor was submitting bills to the management for the work done by him and the management was paying the contractor the due amount as per terms of contract for the quantum of work executed by him. In the context of facts and circumstances the management is not required to justify action as envisaged in the order of reference and even if so, it is justified in not providing employment to the persons concerned on and from 1-11-1987.

3. The case of the concerned workmen, as appearing from the written statement submitted on their behalf by the sponsoring union, Janta Madoor Sangh, briefly stated, is as follows :

The management of Dugda Coal Washery has been doing the work of washing coal obtained from different coal mines. Dugda Coal Washery is a public sector undertaking owned and managed by M/s. B.C.C. Ltd., a Government of India undertaking. In the course of washing of coal at Dugda Coal Washery, the incidental job of plant cleaning and removal of stoppage are being performed by the concerned workmen continuously. The concerned workmen are employed in the job of plant cleaning and removal of slippage which are the jobs of permanent in nature. They had worked on plant cleaning job regularly for more than 240 days in a year without any break. Unfortunately the management of Dugda Coal Washery has been indulging in unfair labour practice in not providing other amenities as being provided to departmental and regular workers. In order to deprive the concerned workmen of all other benefits and proper wages and other benefits alike regular and departmental workmen, the management has been showing them under the employment of different contractors at different time. So the contractors are not independent contractors and they have no control and supervision over the work of the workmen concerned and the work of the concerned workmen are directly supervised and controlled by the engineer and supervisors and authorities of the management. Payment

are being made through contractors for some ulterior purpose and to deprive the concerned workmen of their legitimate benefits. It is relevant to mention that the job of plant cleaning and other incidental job being performed by the workmen concerned had already been prohibited by the Central Government under the Contract Labour (Regulation and Abolition) Act, 1970. A petition was filed before the Labour department of the Central Government that the management of Dugda Coal Washery has been engaging workmen in plant cleaning job in violation of the order of prohibition imposed under the Contract Labour (Regulation and Abolition) Act, 1970. The Labour Enforcement Officer, Bagmara, inspected Dugda Coal Washery in the month of October, 1987 and found the workmen employed on the job of plant cleaning and issued notice on 19-10-87 to the management of Dugda Coal Washery in the matter and as a consequence the management retrenched the concerned workmen with effect from 1-11-87 and thereafter replied on 10-11-87 that they had not employed any such workman on the job of plant cleaning. The management also took the plea that they had already departmentalised the workers engaged on the job of plant cleaning in the year 1980. Some of the workers working in the plant cleaning job at that time as contractor's labour were departmentalised. After some time most of them were transferred to other job and the plant cleaning again started to be done through contract labour. The concerned workmen have been doing the job of plant cleaning since 1984-85. Even after retrenchment on 1-11-87 without any notice or compensation, some of the workmen have been employed to do the same job of plant cleaning. The plant cleaning job consists of removal of fallen coal, coal dust, stones etc. from different areas of Dugda Coal Washery. These jobs are of permanent in nature at Dugda Coal Washery incidental to main job of washing of coal. In order to defeat the claim of the concerned workmen the management has taken the plea that the workmen concerned are engaged in rehandling of coal particles, spillage etc. accumulated inside the Dugda Coal Washery. It does not make any difference to give different name of plant cleaning by describing the same as rehandling of coal particles, spillage etc. while the nature of job has remained the same. The management has employed some regular and departmental workers on the job of plant cleaning and there is no reason as to why the concerned workmen should not be allowed the same status and privilege as granted to other regular employees. Demands on several occasions were placed before the management for regularisation of the concerned workmen but the management avoided the issue on one pretext or another and after inspection of the Labour Enforcement Officer, the management terminated the services of the concerned workmen without notice and without paying any compensation with effect from 1-11-87. Dispute was raised by Janta Mazdoor Sangh on behalf of the concerned workmen but it could not be settled in conciliation proceeding and hence the present reference is made by the appropriate Government. In the circumstances, the union has prayed that the action of the management in terminating the service of the concerned workmen with effect from 1-11-87 be held to be illegal and unjustified and that the concerned workmen are entitled to be reinstated in service with full back wages.

4. In rejoinder to the written statement of sponsoring union, the management has stated that it has its own workers for plant cleaning and certain other jobs which were prohibited under Contract Labour (Regulation and Abolition) Act long ago. The management has denied that any petition was submitted before any authority complaining about engagement of contract labour by the management of Dugda Coal Washery on prohibited category of job. Besides, the management has denied the other statements of the sponsoring union in support of the claim of the concerned workmen as workmen of Dugda Coal Washery.

5. In rejoinder to the written statement of the management, the sponsoring union has asserted that there exists employer-employee relationship between the management of Dugda Coal Washery and the concerned workmen and the present dispute is comprehended under Section 2(k) of the Industrial Disputes Act. The union has denied each and every contention of the management impinging on the claim of the concerned workmen. The union has reiterated that the concerned workmen had been doing the job of removal and collection of spillage of coal from the conveyor belts regularly and that spillage of coal from conveyor belts is a regular feature and so removal and collection of such spillage is permanent nature of job.

6. The management in order to sustain its action has examined two witnesses, namely, MW-1 J. S. Srivastava, now holding the post of Senior Executive Engineer in Dugda Coal Washery and MW-2 Maheshwar Prasad, working in Dugda Washery and Dy. Personnel Manager and laid in evidence a number of documents which have been marked Exs. M-1 to M-6.

On the other hand, the sponsoring union has examined three witnesses, namely, WW-1 Gulab Chouhan, one of the concerned workmen, WW-2 Mahendra Prasad Singh owner of the firm styled M/s. Dugda Enterprises and WW-3 Shree Ram Singh, Secretary of the sponsoring union at Dugda Coal Washery Branch and laid in evidence a sheaf of documents which have been marked Ext. W-1 to W-10 series.

7. The management, in its pleading, has underlined the change of ownership of some of coal washeries including Dugda Coal Washery from time to time. This statement of fact has not been denied by the sponsoring union. According to the management, Dugda Coal Washery previously belonged to Hindustan Steel Ltd. which was succeeded in early 1970s by Steel Authority of India Ltd. Hindustan Steel Ltd./Steel Authority of India also owned two other washeries besides Dugda Coal Washery, namely, Patherdih Coal Washery, located in the district of Dhanbad and Bhojudih Coal Washery located in Purulia district of West Bengal. The Administrative office of all these washeries is located at Saraidella in the district of Dhanbad and the entire organisation including the washeries is called Central Coal Washerries Organisation. The management of all these washeries including Dugda Coal Washery having two units was entrusted by SAIL to M/s. BCCL in 1972 under a power of attorney following nationalisation of coking coal mines and the establishment of M/s. B.C.C. Ltd. Ultimately the ownership of all these washeries including the Administrative office at Saraidella was transferred by SAIL/Central Government to M/s. B.C.C. Ltd. with effect from 1-10-1983.

HSL, SAIL and BCCL are all Government companies under section 617 of the Companies' Act and are wholly financed by the Central Government. M/s. B.C.C. Ltd. is a subsidiary company of holding company, Coal India Ltd. which was established with effect from 1-11-75 following re-organisation of Coal Industry in the Central Public Sector including the nationalised coking and non-coking coal mines.

8. The management has also underlined the purpose of coal washeries in its pleading, not disputed by the sponsoring union. According to the management the purpose of coal washeries was to provide washed coal of required specification to the steel plants of the erstwhile HSL and SAIL after beneficiation of raw prime coking coal produced by the Collieries of M/s. BCCL and fed into these washeries.

9. The pleading of the management discloses that in the process of working of washeries including Dugda Coal Washery, there occurs spillage of coal from conveyor belt and it has to be collected and put back again on to the conveyor belt. These jobs were being performed by the contractor's labourers and the same job was departmentalised on 26-5-80. It appears that the management in its pleadings has not spelt out the technical name of the job performed by the workmen engaged through the contractor which was departmentalised on 26-5-1980.

MW-1 J. S. Srivastava, now holding the post of Senior Executive Engineer in Dugda Coal Washery, has stated that plant cleaning means equipment cleaning and cleaning of surrounding areas. The coal or coal particles fall on the ground as a result of vibration while washery is working. These coal or coal particles are required to be put back

again on to the conveyor belt. This job is a part of plant cleaning job. This is also called removal of spillage of coal to the conveyor. Thus, according to this witness collection of spillage of coal and removal of this spillage of coal on to the conveyor is a part of plant cleaning job. This witness has further stated that prior to 1980 the job of plant cleaning was done through contractor, but the contract system on the job of plant cleaning was abolished. The workmen of the contractor engaged on the job of plant cleaning were regularised and since then the job of plant cleaning is being done by the departmental workers. Thus, it is evident that the workmen engaged by the contractor on the job of plant cleaning were departmentalised not by the pious wishes of the management, but under compulsive exigencies of circumstances as the appropriate authority prohibited engagement of workmen through the agency of contractor on the job of plant cleaning. The sponsoring union has also admitted that some of the workers working on the job of plant cleaning as contractor's workmen were departmentalised in 1980.

It appears that there arose an industrial dispute between the management of Dugda Coal Washery belonging at that time to SAIL and Coal Washery Workers Union over as many as four issues including the issue of departmentalisation of plant cleaning job (Ext. W-1). It appears that a settlement was arrived at between the contending parties on 6-9-79 whereby the management agreed to departmentalise the job of plant cleaning by 7-12-79. This settlement was arrived at during the conciliation proceeding under Section 18(3) of the Industrial Disputes Act. This being so, this settlement is still binding upon the management and the management cannot resile from the terms of the settlement.

10. In the present reference the sponsoring union has come forward with a claim that the concerned workmen were doing the job of plant cleaning in Dugda Coal Washery and in the process they had regularly worked for more than 240 days in a year without any break. But the management, so it is alleged, terminated the services by way of retrenchment on 1-11-87 without any notice or compensation consequent upon issuance of notice by the Labour Enforcement Officer, Baghmara upon the management directing it to show cause presumably for employment of contractor's workmen on prohibited category of job of plant cleaning. It is the further case of the union that some of the concerned workmen have been again re-employed by the management on the job of plant cleaning.

In answer to the claim of the sponsoring union, the management has taken the stance of total denial of engagement of any workman on the job of plant cleaning and asserted that at different time and in different spells the management found it necessary to get the jobs (i) re-handling of coal, debries and slurry etc. from D-I/D-II plants, (ii) re-handling of washed coal from D-I/D-II plants and (iii) re-handling of coal, raw coal, stone, fines and debries etc. executed through contractor. In consideration of the nature of job which was purely temporary and not of permanent or continuous in nature and the contractor concerned obtained licence for execution of the above job and the washery management at all times registered its establishment for employment of contract labour on these jobs under Contract Labour (Regulation and Abolition) Act, 1970 and these jobs were never prohibited at any time under the provision of Contract Labour (Regulation and Abolition) Act, 1970. The management is within its right to engage contractors for execution of these jobs.

11. In order to prove its case that a contractor was engaged for execution of the jobs of re-handling of coal, debries etc. by engaging its own workmen, the management as I have stated before, examined two witnesses and laid in evidence a mass of documents marked Exts. M-1 to M-6. According to MW-1 J. S. Srivastava, in the washery the management has got the job of re-handling of raw coal and the job of re-handling of raw coal is done at the receiving point. The management receive raw coal from different Collieries by railway wagon and un-loading is done by wagon tipplers. Re-handling of coal means selection of slab of coal of specific size from raw coal un-loaded and to separate stone, debries from raw coal and re-handling of coal, slurry, debries is not a part of job of plant cleaning. I have already referred to his evidence and pointed out that according to him coal or coal particles which fall from the conveyor on the ground as a result of vibration while the washery is working are required to be put back again on the conveyor

belt and this is a part of plant cleaning job and this is also called removal of spillage of coal on to the conveyor. Thus, according to his evidence the removal of spillage of coal on to the conveyor belt is a part of plant cleaning job. According to him plant cleaning job is also known as house keeping job. Advertising to work order Ext. W-4 which corresponds to Ext. M-2 series, he has admitted that re-handling of coal includes collection of washed coal which spills from the conveyor. Thus, re-handling of washed coal includes collection of washed coal which spills down from the conveyor. This is done essentially for the purpose of putting the same back on to the conveyor. The management has produced a series of copies of letters of Mahendra Prasad Singh, the Contractor engaged in Dugda Enterprise requesting the management to issue gate passes for the workers engaged for plant cleaning/re-handling of coal in Dugda Coal Washery (Ext. M-1 series). In some of the letters the contractor has requested the management to issue gate pass for workers engaged on the job of re-handling of coal. The management issued work orders to the contractor for the job of re-handling of coal (Ext. M-2 series). Thus, from the evidence discussed above it is established that re-handling of coal includes collection of washed coal which falls from the conveyor. According to MW-1 J. S. Srivastava the coal so collected are required to put back again on to the conveyor and this is a part of the plant cleaning job and the other name of the plant cleaning job is house keeping job.

The union has laid evidence to prove that the concerned workmen were doing the job of plant cleaning in Dugda Coal Washery. WW-1 Gulab Chouhan, one of the concerned workmen, has stated that he started working in Dugda Coal Washery in 1984 on the job of plant cleaning. According to him, all the concerned workmen including him were working in the job of plant cleaning in Dugda Coal Washery, and all the workmen were stopped from work by the management on 1-11-87. He has sketched out the duties of the plant cleaning mazdoors. According to him, in the process of their duty as plant cleaning mazdoor they are required to clean the coal fallen on the machine, clean the machine by spraying water through hose-pipe and lift the coal fallen down from the conveyor belt on to the conveyor. In 1984 they used to get Rs. 10 per diem as wages and when they were stopped from work they used to get Rs. 15.85 per head per day as wages. He has further stated that they used to do the job of plant cleaning as per direction and supervision of Charge man, Supervisor and sometimes by Engineer also. In 1984 a Contractor other than M/s. Durga Enterprise was in the field for execution of such work. He has denied that they had worked for re-handling of coal by separating shale, stone etc. from raw coal. WW-2 Mahendra Prasad Singh is the owner of M/s. Durga Enterprise. He has admitted that his firm was not a registered firm and that he used to supply labour to the management of Dugda Coal Washery. He has stated also that he did not obtain any licence from the Licensing Authority under the Contract Labour (Regulation and Abolition) Act.

12. Sri R. S. Murthy, learned Advocate for the management contended that the union has remitted its case by introducing the story that Mahendra Prasad Singh, owner of M/s. Durga Enterprise was a contractor for supply of labour. Indeed, the position is really so. The union has not pleaded that Mahendra Prasad Singh was a labour supplier. WW-3 Ram Singh is the Secretary of the sponsoring union in Dugda Coal Washery. He has asserted that the concerned workmen were working as plant cleaning mazdoor and that they were working on the job since 1984. According to him, the management terminated the services of the concerned workmen with effect from 1-11-1987. He has further stated that he raised dispute before the management for regularisation of services of the concerned workmen and for payment of wages to them at par with wages paid to regular workmen of the washery and that the R.L.C. (C) directed the Labour Enforcement Officer to enquire into the matter. The Labour Enforcement Officer enquired into the matter, inspected the spot and saw the concerned workmen working on the job of plant cleaning. He has proved the report of the Labour Enforcement Officer which has been marked Ext. W-7.

The report of the Labour Enforcement Officer dated 19-8-87 (Ext. W-7) indicates that he inspected Dugda Coal Washery on 23-9-87 and found that the plant cleaning

job was being done by employment of workmen through contractor, Mahendra Prasad Singh. It has been alleged by the union that after issuance of notice by the Labour Enforcement Officer, the management terminated the services of the concerned workmen on 1-11-87 and replied to the authorities on 10-11-87 that they have not employed any workmen on the job of plant cleaning (Ext. M-4). The letter of the management to the Labour Enforcement Officer dated 10-11-87 discloses that plant cleaning job being a prohibited category of job has been departmentalised and that the labourers are engaged through external agencies for re-handling of coal, stone, debries etc. from different areas of the plant and that too for short duration depending upon urgency of the plant. Mahendra Prasad Singh, Contractor of Durga Enterprise has been engaged on this job and photo copy of the work orders were sent alongwith the letter.

13. The case of the sponsoring union is that most of the workmen who were departmentalised earlier as plant cleaning mazdoor were transferred to other job and plant cleaning again started to be done through contractor labour. This has been disputed by the management. MW-1 J. S. Srivastava has stated that about 150 to 160 workers were engaged on the job of plant cleaning and their services were departmentalised. Now about 100 of such workmen have been doing the job of plant cleaning. He has denied that only 40 to 50 regular workmen have been deployed on the job of plant cleaning. WW-1 Gulab Chouhan has stated that some 50 to 60 regular workmen of the management were also doing the job of plant cleaning in 1987. The internal note of the management on this matter is revealing. This note-sheet has been produced by the union and has been marked Ext. W-3 which is reproduced hereinbelow :

"Sub.—House-keeping at Dugda-I Coal Washery

The persons departmentalised for the purpose of House-keeping of Dugda-I have been absorbed in operation and maintenance department of above plant against the vacancies created by retirement of persons as well as commissioning of Upgradation plant. Hence, with the very small number of available persons the condition of House-keeping all around the plant deteriorated. If action for improvement is not taken immediately, the production of plant is likely to be affected including the safety of persons working at various sections of the plant. This has also been pointed out by Factory Inspector in his inspection note No. 66 dated 22-3-90. It is, therefore, proposed to get the work done by engaging an outside agency. The total quantity of various materials to be handled in Dugda-I including Raw coal section and Upgradation plant is about 5900 M.T. and by taking a rate of Rs. 8.40 per M.T. (Rate Ref. W.O. SMF/C/24/90-1499 dated 9-11-90) the total amount comes to Rs. 49,560.

Addl. CE(W)/Dugda is requested to kindly approve the proposal for expenditure of Rs. 49,560 for improvement of the House-keeping and Dy. FM/Dugda is requested to please concur in the same. The expenditure will be charged against the operation Budget for the year, 1991-92.

Sd/-
Dy. C.E. (CP) 17/7
D-I

Dy. F.M.

No. DCWP/House-keeping/91-1903 'A' dated 17th July, 91

In view of the Addl. C.E. (F&M)/Dugda remarks on the body of our Lt. No. FA/HSK/91-92 dated 20-7-91 the proposal for handling of 5900 MT of coal @ Rs. 8.40 is concurred in at a total cost of Rs. 49,560 subject to approval of C.C.M. Since from 23-3-91 to 2-7-91 a sum of Rs. 2,30,014.02 has already been incurred on the account of handling of 25,138.229 MT of coal. In view of the urgency stated by Addl. C.E. (E&M) a consolidated proposal for Rs. 8,16,480 has already been sent after Budget certification vide this Office Letter No. DG/Accnt/HK/12/96/91 dated 5-8-91. As it is a perennial nature of job and also falls under prohibited category. Administrative approval of Competent Authority must be obtained.

Sd/- Dy. Fin. Manager

Addl. Chief Engr. (E&M)"

According to MW-1 J. S. Srivastava house-keeping job is the other name of plant cleaning job. This note-sheet discloses that the workmen departmentalised for the purpose of plant cleaning job had been absorbed in Operation and Maintenance Department against vacancy created by retirement of persons as well as commissioning of upgradation of plant. The initiator of the note-sheet, Dy. C.E. (CP) proposed that House-keeping job be done by engaging outside agency. Dy. Finance Manager has recorded his note on the note-sheet to state that the job is perennial nature of job and also falls under prohibited category and administrative approval must be obtained. Thus, it appears that the management under compulsive circumstances, tried to subvert the prohibition on the job of plant cleaning by employment of contract labour by giving a different nomenclature of the job, such as, re-handling of coal etc.

14. It appears that plant cleaning is an integral part of establishment of the management of Dugda Coal Washery. It is a job of perennial nature as the appropriate authority prohibited employment of workmen through contractor on the job of plant cleaning. The concerned workmen were performing the job on the land belonging to the management and there is no cogent evidence on record to indicate that the performance of job of the concerned workman was being supervised by the contractor. On the other hand, the evidence of WW-1 Gulab Chouhan firmly establishes the position that their job was being supervised by the Chargeman, Supervisor and sometime by the Engineer of the management. Hence, I come to the conclusion that the execution of the job by the concerned workmen was being supervised by the personnel of the management. The concerned workmen were broadly under the control and supervision of the management.

15. The management could not produce any certificate of registration of its establishment for employment of workmen through the agency of Mahendra Prasad Singh, the contractor. The licence of the contractor also has not been produced. The job of plant cleaning through the agency of the contractor has since been prohibited by the appropriate authority under the provision of Contractor Labour (Regulation and Abolition) Act. This being the position, I am constrained to hold that the concerned workmen were really the workmen of the management of Dugda Coal Washery and that their duties include at least a part of plant cleaning job.

16. It appears that the union did not pursue the matter of the concerned workmen with the management in the discussions held on 25-1-88 (Ext. M-6).

Shri R. S. Murthy, learned Advocate, has asserted that the union by its act as aforesaid, has jettisoned the case of the concerned workmen.

17. Shri B. Lall, learned Advocate for the sponsoring union, has asserted that the note of discussion does not indicate that the union has abandoned the case of the concerned workmen and that the note of discussion simply indicates that the union did not pursue the cause at that stage.

18. The note of discussion does not indicate that the union abandoned the cause of the concerned workmen. Had it been so, it would not have pursued the cause at the conciliation level or before this Tribunal.

19. According to MW-1 Gulab Chouhan, the management of Dugda Coal Washery subsequently gave employment to some 50 of the concerned workmen with effect from 10-4-91 and these 50 workmen also figure in the present reference and are still working in the Washery. He has not spelt out the names of these 50 workmen who have been given employment by the management.

In the present reference the issue whether the action of the management is justified in terminating the services of 64 workmen detailed in the annexure with effect from 1-11-1987. But in the context of fact that 50 of the concerned workmen have been given employment by the management with effect from 10-4-91 and names of these 50 workmen not being available it has become otiose to pronounce any finding as to whether the action of the management in terminating the services of the 64 concerned workmen is justified or not. Being alive to these difficulties WW-3 Ram Singh, in his testimony before this Tribunal, has asserted that the demand of

the union is for regularisation of the service of the concerned workmen with effect from their original date of appointment and payment of wages at par with departmental workmen. There is no evidence on record to indicate the exact date of appointment of each of the concerned workman. The management has also taken the stance that they have got no requirement for so many workmen. Evidently the evidence indicates that they have got requirement of workmen as notesheet (Ext. W-3) firmly indicates. In the circumstances of the case, an award should be passed directing the management to give employment to 14 other workmen immediately and to regularise the services of all the 64 workmen within three months from the date of publication of the award.

20. Accordingly, the following award is rendered—

the management of M/s. B.C.C. Ltd. in relation to Dugda Coal Washery, P.O. Dugda, Dist. Giridih (Bihar) is directed to give employment to 14 (fourteen) concerned workmen immediately and to regularise the services of all the 64 concerned workmen as plant cleaning mazdoors within three months from the date of publication of the award and to pay them wages as per scale.

In the circumstances of the case, I award no cost.
This is my award.

S. K. MITRA, Presiding Officer

नई दिल्ली, 28 जुलाई, 1992

का. आ. 2156.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, इलाहाबाद बैंक के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-7-92 को प्राप्त हुआ था।

[संख्या एल - 12012/15/86 - हो-2 (ए)]
वो. के. वेनुगोपालन, डेस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2156.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Allahabad Bank and their workmen, which was received by the Central Government on the 21st July, 1992.

[No. L-12012/15/86-D.II(A)]
V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,
DEOKI PALACE ROAD, PANDU NAGAR, KANPUR

Industrial Dispute No. 120 of 1986

In the matter of dispute:

BETWEEN

Sri Chandrika Prasad C/o Sri P. C. Bajpai,
Allahabad Bank,
Swarup Nagar, Kanpur.

AND

The Chief Manager,
Allahabad Bank,
Mall Road, Kanpur.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-12012/15/86-D.II(A) dated 27th October, 1986, has referred the following dispute for adjudication to this Tribunal:—

“Whether the action of the management of Allahabad Bank, Kanpur in terminating the services of Sri

Chandrika Prasad, Ex-peon-cum-farrash with effect from 2nd November, 1982 while retaining his juniors in the service and not considering him for further employment while recruiting fresh hands was justified? If not, to what relief the workman concerned is entitled?”

2. In this case 3rd July, 1992 was the date for filing of the affidavit evidence by the workman. Sri M. K. Verma au hoised representative for the Management present but none appeared for the workman. On 20th September, 1991 the case was ordered to come up on 15th November, 1991 for filing of affidavit evidence but despite availing of several opportunities till 3rd July, 1992, no affidavit evidence was filed in the case.

3. It therefore, appears that the workman is not interested in prosecuting the case and a no claim award is given in the case against the workman.

4. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 28 जुलाई, 1992

का. आ. 2157.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, इलाहाबाद बैंक के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-7-92 को प्राप्त हुआ था।

[संख्या एल--12012/431/88-डी 2 (ए)]

वो. के. वेनुगोपालन, डेस्क अधिकारी

New Delhi, the 28th July, 1992

S.O. 2157.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Allahabad Bank and their workmen, which was received by the Central Government on the 21st July, 1992.

[No. L-12012/431/88-D.II(A)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,
DEOKI PALACE ROAD, PANDU NAGAR, KANPUR

Industrial Dispute No. 7 of 1989

In the matter of dispute :

BETWEEN

Sri Babu Lal,
C/o Dr. P. C. Bajpai,
990, Block Y Kidwai Nagar,
Kanpur.

AND

The Asstt. General Manager,
Allahabad Bank,
Swarup Nagar,
Kanpur.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-12012/431/88-D.II(A) dated 4th January, 1989, has referred the following dispute for adjudication to this Tribunal:—

Whether the action of the management of Allahabad Bank in terminating the services of Sri Babu Lal and not considering for further employment while re-

now survives no dispute between the parties, the Hon'ble Tribunal may pass no dispute award in the matter and dispose of the present proceedings. It is also stated in the joint application that Sri Mahabir Singh concerned workman has since been appointed at Navyug Market Branch as Farrash-cum-Peon w.e.f. 13th January, 1992.

3. Thus in view of the above there remains no dispute between the parties, therefore, a no claim award is given in the case.

4. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 28 जुलाई, 1992

का. आ. 2160—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कैनग बैंक के प्रबन्धनात्मक के सबद्ध नियोजक और उनके कर्मचारी के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकारी, कानपुर के प्रबन्धन का प्रबंधन करती है, जो बैन्डीग सरकार को 21-7-92 को प्राप्त हुआ था।

[संग्रह एन -- 12012/206/38--दी 2 (प)]

का. क. वेणुगोपालन, डैस्क पर्सिकारी

New Delhi, the 28th July, 1992

S.O. 2160.—In pursuance of Section —17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workmen, which was received by the Central Government on the 21-7-92.

[No. L-12012/206/88-D-II(A)]
V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 170 of 1988

In the matter of dispute between :

Sri Mohan Lal,
S/o Sri Karna Vir Singh,
Mohalla Vishan Nagar,
Kalsiya Road, Sharapur.

AND

Assistant General Manager,
Canara Bank,
Delhi South,
Marshall House,
Sansad Marg,
New Delhi.

AWARD

1. The Central Government, Ministry of Labour, vide Notification No. L-12012/206/88-D.2(A) dated 30-11-1988, has referred the following dispute for adjudication to this Tribunal :—

Whether the action of the management of Canara Bank in terminating the services of Sri Mohan Lal and not considering him for further employment while recruiting fresh hands under section 25H I.D. Act is justified? If not, to what relief is the workman entitled?

2. The workman's case is that the management of Canara Bank opened a Bank's Branch at Puljorian Saharanpur and in the said branch he was appointed on daily wage of Rs. 25 for performing normal and regular duties of a peon on

15-10-84. He alleges that he belongs to a Backward Class and that his name was sponsored by the Employment Exchange, Saharanpur. He was called for interview and was selected by the bank for doing job of a peon. However he was not issued any letter of appointment. After his appointment at the said branch of the bank he worked for 225 days upto 5-12-85 whereafter his services were terminated without issue of any letter of termination or termination notice. He was also not given any notice pay in lieu of notice nor he was paid retrenchment compensation. At the time of his retrenchment he was not the junior most. Further after the termination of his services new hands were kept by the bank without giving him an opportunity of reemployment. Thus the action of the bank in terminating his services is illegal and unjustified. In fact the bank violated the mandatory provisions of sections 25F, 25G and 25H of the I.D. Act and Rules 76, 77 and 78 of the I.D. (Central) Rules, 1957. The bank also violated the provisions of paras 493, 495, 507, 516, 519, 522 and 524 of the Sastry Award as modified by paras 20.7 and 20.8 of the First Bipartite Settlement. Even in his case Articles 14 and 16 of the Constitution have been violated by the management of the bank. He has, therefore, prayed for a declaration that the action of the bank in terminating the services of the workman w.e.f. 5-12-85 and the action of the management in not considering him for further employment while recruiting fresh hands be declared void and unjustified. He has further prayed for his reinstatement with full back wages and all consequential benefits.

3. The case is contested by the management. The management plead that the sub-staff of the bank often avail various kinds of leave. There is a tendency of availing leave with or without notice. Therefore, in order to meet such exigencies the bank maintain a panel of daily wagers. The bank has prescribed certain norms for inducing persons into the panel of daily wagers. They are to be sponsored by the Employment Exchange. They are listed in the daily wagers panel and are entitled to seek permanent absorption as sub-staff as and when vacancy arises on the basis of their seniority. Such a panel is maintained district wise. So far as the workman is concerned he was engaged at bank's Saharanpur Branch on 26-11-84 and not on 5-10-84 as alleged by him. Since in terms of Government Guidelines persons who are in the panel of daily wagers have to be sponsored by the Employment Exchange, the branch had to discontinue the services of those daily wagers whose names had not been sponsored by the Employment Exchange w.e.f. 1-3-1985. Subsequently on his name being sponsored by the Employment Exchange he was called for interview and was selected for employment in the panel of daily wagers. The management further plead that the workman had worked for 32 days in 1984, and 162 days in 1985. According to the management due to merger of the Lakshmi Commercial Bank Limited with Canara Bank there was a surplus of six sub-staff who were utilised in the two branches of Saharanpur, where the workman was being engaged. This resulted in the non giving of job to the workman. However, his name was not deleted from the panel of daily wagers. Therefore, there does not arise the question of termination of his services or his retrenchment. The management deny violation of any provisions of the I.D. Act, any Rule of the I.D. (Central) Rules, 1957, any para of Sastry Award and any Article of the Constitution of India. Thus the workman is entitled to no relief.

4. In his rejoinder the workman denies that he was appointed in a leave vacancy. The fact is that his name was sponsored by the Employment Exchange and the Branch Manager vide his letter dated 20-5-85 called him for interview on 28th May, 1985.

5. In support of his case, the workman has examined himself and has filed some documents. On the other hand the management have examined Sri Jawahar Lal Jain, Manager Atauli Branch and have filed some documents in compliance of the order dated 3-10-1991 of the Tribunal.

6. In his claim statement as well as in his affidavit the workman has deposed that a new branch of the bank was opened at Puljorian Saharanpur in 1984. There is no rebuttal nor there has been any cross-examination of the workman on this point. So this fact was treated as proved.

7. Again in his affidavit the workman has deposed that he was kept as a peon on daily wages. In his cross-examination he has deposed that he was at temporary peon. It

therefore, means that he was not a regular appointee to the post of a Peon.

8. In para 4 of the written statement it has been pleaded by the management that there had been a tendency amongst the sub-staff to avail leave with or without notice. In order to meet such exigencies the bank maintains a panel of daily wagers. Such daily wagers are entitled to seek permanent absorption as sub-staff as and when vacancies arise as per their seniority. Such a panel is maintained districtwise. The facts so pleased by the management have been corroborated by the management witness Sri Jawahar Lal Jain by means of his affidavit. Even in his cross-examination the workman has admitted that his name is included in the panel of daily wagers.

9. In his cross-examination, the management witness has deposed that regular appointment of sub-staff is made by the Circle Office, Delhi. The branch manager is only empowered to keep daily wagers. According to him it is the Circle Office which fills up permanent vacancies out of the panel of daily wagers. He also states that the name of the workman also appears in the panel of the Circle Office.

10. Thus from the above evidence it becomes evident that the workman was kept as a daily wager and his name appears on the panel of circle office. On account of his name being included in the said panel, at one time or the other the permanent vacancy occurring will be filled up from amongst those whose name appears in the panel.

11. The important question to be determined is whether or not the provisions of section 25 I.D. Act are attracted to the case of the workman. The workman has alleged in his claim statement that he was given appointment on 15th October, 1984 and he had worked for over 225 days upto 5-12-85. According to him wages for many Sundays, Holidays and National Holidays were not paid to him. On the other hand the management's case is that the workman was engaged at Saharanpur Branch on 26-11-84 and not on 15-10-84. Management's further case is that the workman had worked for 32 days in 1984 and for 162 days in 1985. In his cross-examination the management witness has admitted that the workman was first appointed at the Saharanpur Branch on 15-10-84.

12. In compliance of my order dated 3-10-91, passed on the submissions made by Sri K. N. Soni, the authorised representative for the workman, during the course of his arguments, the management filed paid vouchers of the period 6-12-84 to 5-12-85. The formal proof of all the vouchers filed was disposed with by Sri Soni. These paid vouchers which show the working of the workman during the period 15-10-84 to 4-12-85 have been marked Ext. M-1 to Ext. M-18. From these vouchers it appears that the workman had worked for 31 days in 1984 and for 162 days in 1985. The last payment has been made in respect of 4-12-85. So for the purposes of section 25F I.D. Act, the relevant period of one year preceding the alleged date of termination will be 5-12-84 to 4-12-85. During this period as will be evident, from these paid vouchers, the workman have worked for 18 days in December, 1984 and for 162 days in 1985, i.e. to say he had worked for 190 days only during the said period of one.

13. Now we have to see how many Sundays and Holidays including National Holidays will have to be further taken into the account for ascertaining the correct number of working days of the workman.

14. In vouchers marked Ext. M-5, M-7, M-14 and M-15 dates on which the workman had worked are not found given I may state here that the legal position that the workman will be entitled to wages for Sunday only if he had for six days continuously prior to it is not disputed by the parties authorised representative. From the dates mentioned in the paid vouchers it appears to me that the workman had been paid for most of the Sundays. However he had not been paid for 6-1-85, 17-2-85 and 23-6-85 which were Sundays.

15. From paid vouchers marked Ext. M-5, M-7, M-14 and M-15, it is evident that the workman had worked for 59 days in all. On the basis of that after every six days he is entitled to paid holidays, if he is said to have worked continuously

during the said period, he would be entitled to wages for 10 more Sundays.

16. Therefore, to the figure of 190, 13 Sundays are added by way of working days.

17. In his cross-examination the management witness has deposed that in a year there are 20 or 22 National Holidays and Holidays. We can safely add 12 such holidays to the abovementioned days of working of the workman fixed proportionately, on the basis of that out of 365 days he had worked for 190 days.

18. Thus the workman is found to have worked for 190 days, 13 Sundays and 12 National Holidays, total 215 days. Having worked only for 215 days during the period of one year preceding the date of the alleged termination of his services, the provisions of section 25F I.D. Act are not attracted in his case. This being so, the workman was not entitled to any notice or notice pay and retrenchment compensation.

19. In view of the fact that he had not worked for one year continuously within the meaning of section 25B I.D. Act, the provisions of Section 25G read with Rule 77 of I.D. (Central) Rules, 1957 would not apply to his case. So will be the provisions of section 25H read with Rule 78 of I.D. Central Rules.

20. It is a case where according to the workman his services have been terminated and according to the management there has been no termination of his services and that his name still appears on the panel of daily wagers entitled to be absorbed in the regular service of sub-staff of the bank. In other case reinstatement with full back wages cannot be ordered in his case. In other words such a relief cannot be granted to the workman. He is only entitled to be engaged as a daily wager until he is permanently absorbed in the bank's service as a sub-staff. It will be proper if the management because of their own admission in the written statement and the admission made by the management witness informed the workman about his position in the panel prepared for the absorption of daily wagers like him in the regular service of the bank as sub-staff.

21. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 21 जुलाई, 1992

का आ 2161.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 18 के अनुपर्यन्त में, केन्द्रीय संस्कार विभाग द्वारा निर्विरापली के प्रबन्धतात्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच, अनबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकार मंत्रालय के प्रबन्ध को प्राप्ति करनी है, जो केन्द्रीय संसार को 20-7-92 को प्राप्त हुआ था।

[स एल--41012/23/88 द्व 2 (बी) (पी टी)
एल--41012/20/88-द्व 2 (बी) (पी टी)
एल--41012/19/88-द्व 2 (बी) (पी टी)]

के द्वा. द्वीपा, डॉ अंगिरा, डॉ अंगिरा,

S.O. 2161.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 ('4 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Southern Railway, Tiruchirapalli and their workmen, which was received by the Central Government on 20-7-92.

[No. L-41012/23/88-D.II(B)(Pt.)
L-41012/20/88-D.II(B)(Pt.)
L-41012/19/88-D.II(B)(Pt.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,
TAMIL NADU, MADRAS

Thursday, the 26th day of September, 1991

PRESENT :

THIRU M. GOPALASWAMY, B.Sc. B.L.
Industrial Tribunal

INDUSTRIAL DISPUTE Nos. 6 of 1989, 59 of 1989
AND 60 OF 1989

(In the matter of the dispute for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947 between the workmen and the Management of Senior Divisional Personnel Officer, Southern Railway, Tiruchirapalli).

In I.D. No 6 of 1989

BETWEEN

Thiruvalargal K. Kaliamurthy, D. Kaliaperumal, M. Thangaraj and M. Paramasivam, C/o Thiru T. Fenn Walter, No. 161, Thambu Chetty Street, II Floor, Madras-600 001.

And

The Senior Divisional Personnel Officer, Southern Railway, Tiruchirapalli.

REFERENCE :

Order No. L-41012/23/88-D.II(B), Ministry of Labour, dated 4-1-1989, Government of India.

In I.D. No. 59 of 1989

Between

Thiru S. Ravindran, C/o Shri T. Fenn Walter, No. 161, Thambu Chetty Street, II Floor, Madras-600 001.

And

The Senior Divisional Personnel Officer, Southern Railway, Tiruchirapalli.

REFERENCE :

Order No. L-41012/20/88-D.II(B), Ministry of Labour, dated 16-6-1989, Government of India.

In I.D. No 60 of 1989

Between

Thiru M. Ponnusamy, C/o Thiru T. Fenn Walter, No. 161, Thambu Chetty Street, II Floor, Madras 600 001.

And

The Senior Divisional Personnel Officer, Southern Railway, Tiruchirapalli.

REFERENCE :

Order No. L-41012/19/88-D.II(B), Ministry of Labour, dated 16-6-1989, Government of India.

These disputes coming on for final hearing on Thursday, the 29th day of August, 1991 upon perusing references, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiruvalargal T. Fenn Walter, G. Pannettselvam, P. Vijayakumar, Fredrick Castro, Authorised Representatives and R. Lawrence Advocate appearing for the workmen in all the three disputes and of Thiru R. Venugopal, Advocate appearing for the Management in all the three disputes and these disputes having stood over till this day for consideration, this Tribunal made the following :

COMMON AWARD

In I.D. No. 6 of 1989

This dispute between the workmen and the management of Senior Divisional Personnel Officer, Southern Railway,

Tiruchirapalli arises out of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-41012/23/88-D.II(B), dated 4-1-1989 of the Ministry of Labour for adjudication of the following issue :

"Whether the action of the acting Sr. Divisional Personnel Officer, Southern Railway, Tiruchirapalli in terminating the services of their workmen S/Shri K. Kaliamurthy, D. Kaliaperumal, M. Thangaraj and M. Paramasivam w.e.f. 20-2-1986 is justified ? If not, to what relief the said workmen are entitled to ?"

2. The Petitioners-workmen viz. Tvk. K. Kaliamurthy, D. Kaliaperumal, M. Thangaraj and M. Paramasivam in the claim statement allege as follows : They were working as Gangman from 1-11-1974, 17-12-1978, 17-12-1978 and 21-9-1977 respectively under the direct control of Permanent Way Inspector, Tiruchirapalli Division of the Respondent. They attained C.P.C. status under an order dated 20-10-1984 and were given the pay scale of Rs. 200 to Rs. 250. The Petitioners were retrenched from service with effect from 21-2-1986 by an order dated 20-12-1986 issued by the Permanent Way Inspector, Kurinjiipadi. In view of the Petitioner continuous working for more than 246 days without break under the Genl. Manager, Southern Railway, Park Town, Madras, such retrenchment is illegal. They were called before the Permanent Way Inspector and directed to sign letters which were written according to the dictation of the Permanent Way Inspector. They were not paid compensation and notice pay. When retrenching the Petitioners, the Respondent retained persons who were juniors as against the Petitioners in the service. The retrenchment of the Petitioners is in contravention of Section 25-F and 25-N of the Industrial Disputes Act, and also Section 141(6) of the Indian Railway Establishment Code Volume-I. Hence the Respondent is liable to reinstate the Petitioners in service and an award may be passed as prayed for.

3. The Respondents in their counter statement as follows : The Petitioners were initially taken as casual labourers with the status of Gangmen. They were allowed to work by the supervisory officials only as and when work was available. It is the practice of the Respondents to employ only a fixed number of workmen who will be enough to finish the work on hand. Whenever a particular work is completed, the labourers engaged for that work were terminated (retrenched). The Permanent Way Inspector, Kurinjiipadi issued the termination notices to the Petitioners who had refused to accept the said notices. They represented that they would not receive the notice or the compensation amounts offered. Though the Petitioners have been conferred with temporary status, they did not acquire thereby any right to continuous employment the status of a permanent employee. The four Petitioners were among fifteen casual labourers who occupied the junior-most positions in the list of seniority. It is not true that workers who were juniors to the Petitioners were retained in service while retrenching the Petitioners with effect from 21-2-1986.

4. It is not true that the Petitioners were made to appear before the Permanent Way Inspector Kurinjiipadi on 22-2-86 and required to sign letters prepared at the instance of the Permanent Way Inspector. Arrangements were made to make payment of retrenchment compensation by Senior Divisional Personnel Officer, Tiruchirapalli on 21-2-1986 but the Petitioners refused to receive the same and the termination notice. When the particular work, for which 49 casual workers was finished, the remaining work did not need all of them. Hence only 34 workmen were retained to come up with the available work and 15 juniormost workmen including the four Petitioners herein were retrenched lawfully. There is no violation of Section 25-F and 25-N of the Industrial Disputes Act. Hence the order of retrenchment of the Petitioners is valid and lawful and the claim is liable to be dismissed.

5. The points for determination are :--

(1) Whether the termination orders in respect of the four Petitioners is lawful and just ?

(2) To what relief the Petitioners are entitled ?

6. In I. D. No. 59/1989.

This dispute between the workman and the management of Senior Divisional Personnel Officer, Southern Railway, Tiruchirapalli arises out of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-41012/20/88-D. II (B), dated 16-6-1989 of the Ministry of Labour, for adjudication of the following issue :—

“Whether the action of the acting Senior Divisional Personnel Officer, Southern Railway, Tiruchirapalli in terminating services of the workman Shri S. Ravindran w.e.f. 20-2-1986 is justified ? If not, to what relief the said workman is entitled to ?”

7. The Petitioner-workman Thiru S. Ravindran in his claim statement alleges as follows : He was working as Gangman from 21-11-1979 under the direct control of the Permanent Way Inspector, Tiruchirapalli. He has attained C.P.C. status under an order dated 20-10-1984 and was placed in the scale of Rs. 253/- . The Petitioner was retrenched from service with effect from 21-2-1986 by an order dated 20-12-1986 issued by the Permanent Way Inspector, Kurinchipadi. In view of the Petitioner's continuous working for more than 240 days without break under the General Manager, Southern Railway, Park Town, Madras, such retrenchment is illegal. Petitioner-workman was called before the Permanent Way Inspector and directed to sign the letter which was written according to the dictation of the Permanent Way Inspector. He was not paid compensation and notice pay. When retrenching the Petitioner-workman, the Respondent retained persons who were juniors, as against the Petitioner in service. The retrenchment of the Petitioner is in contravention of Section 25-F and 25-N of the Industrial Disputes Act and also Section 141(6) of the Indian Railway Establishment Code Volume I. Hence the Respondent is liable to reinstate the Petitioner-workman in service and an award may be passed as prayed for.

8. The Respondents in their counter statement state as follows : The Petitioner Thiru S. Ravindran was initially taken as casual labourer with the status of Gangman. He was allowed to work by the supervisory officials only as and when work was available. It is the practice of the Respondents to employ only a fixed number of workmen who will be enough to finish the work on hand. Whenever a particular work was completed, the labourers engaged for that work were terminated (retrenched). The Permanent Way Inspector, Kurinchipadi (now Permanent Way Inspector, Vridhachalam) issued the termination notice to the Petitioner who had refused to accept the said notice. He represented that he would not receive the notice or the compensation amounts offered. Though the Petitioner has been conferred with temporary status, he did not acquire thereby any right to continuous employment the status of a permanent employee. The Petitioner was among fifteen casual labourers who occupied the juniormost position in the list of seniority. It is not true that workers who were juniors to the Petitioner were retained in service while retrenching the Petitioner with effect from 21-2-1986.

9. It is not true that the Petitioner was made to appear before the Permanent Way Inspector, Kurinchipadi on 22-2-85 and required to sign letters prepared at the instance of the Permanent Way Inspector. Arrangements were made to make payment of retrenchment compensation by Senior Divisional Personnel Officer, Tiruchirapalli on 21-2-1986, but the Petitioner refused to receive the same and the termination notice. When the particular work, for which 49 casual workers was finished, the remaining work did not need all of them. Hence only 34 workmen were retained to cope up with the available work and 15 juniormost workmen including the Petitioner herein were retrenched lawfully. There is no violation of Section 25-F and 25-N of the Industrial Disputes Act. Hence the order of retrenchment of the Petitioner is valid and lawful and the claim is liable to be dismissed.

10. The points for determination are :

(1) Whether the termination order in respect of the Petitioner is lawful and just ?

(2) To what relief the Petitioner is entitled ?

11. In I.D. No. 60 of 1989

This dispute between the workman and the management of Senior Divisional Personnel Officer, Southern Railway, Tiruchirapalli arises out of reference under section 10(1)(d) of the Industrial Disputes Act, 1947 by the Government of India in its Order No. L-41012/19/88-D.II(B), dated 15-6-1989 of the Ministry of Labour, for adjudication of the following issue :

“Whether the action of the acting Senior Divisional Personnel Officer, Southern Railway, Tiruchirapalli in terminating services of the workman Shri M. Ponnusamy w.e.f. 20-2-1986 is justified ? If not, to what relief the said workman is entitled ?”

12. The Petitioner-workman Thiru M. Ponnusamy in his claim statement alleges as follows : He was working as Gangman from 4-6-1974 under the direct control of the Permanent Way Inspector, Tiruchirapalli. He has attained C.P.C. status under an order dated 20-10-1984 and was placed in the scale of Rs. 253. The Petitioner was retrenched from service with effect from 21-2-1986 by an order dated 20-12-86 issued by the Permanent Way Inspector, Kurinchipadi. In view of the Petitioner's continuous working for more than 240 days without break under the General Manager, Southern Railway Park Town, Madras, such retrenchment is illegal. Petitioner-workman was called before the Permanent Way Inspector and directed to sign the letter which was written according to the dictation of the Permanent Way Inspector. He was not paid compensation and notice pay. When retrenching the Petitioner-workman, the Respondent retained persons who were juniors as against the Petitioner in service. The retrenchment of the Petitioner is in contravention of Section 25-F and 25-N of the Industrial Disputes Act and also Section 141(6) of the Indian Railway Establishment Code Volume I. Hence the Respondent is liable to be reinstated the Petitioner-workman in service and an award may be passed as prayed for.

13. The Respondent in their counter statement state as follows : The Petitioner Thiru M. Ponnusamy was initially taken as casual labourer with the status of Gangman. He was allowed to work by the supervisory officials only as and when work was available. It is the practice of the Respondents to employ only a fixed number of workmen who will be enough to finish the work on hand. Whenever a particular work was completed, the labourers engaged for that work were terminated (retrenched). The Permanent Way Inspector, Kurinchipadi (now Permanent Way Inspector, Vridhachalam) issued the termination notice to the Petitioner who had refused to accept the said notice. He represented that he would not receive the notice or the compensation amounts offered. Though the Petitioner has been conferred with temporary status, he do not acquire thereby any right to continuous employment the status of a permanent employee. The Petitioner was among fifteen casual labourers who occupied the juniormost position in the list of seniority. It is not true that workers who were juniors to the Petitioner were retained in service while retrenching the Petitioner with effect from 21-2-1986.

14. It is not true that the Petitioner was made to appear before the Permanent Way Inspector, Kurinchipadi on 22-6-85 and required to sign letters prepared at the instance of the Permanent Way Inspector. Arrangements were made to make payment of retrenchment compensation by Senior Divisional Personnel Officer, Tiruchirapalli on 21-2-1986, but the Petitioner refused to receive the same and the termination notice. When the particular work, for which 49 casual workers was finished, the remaining work did not need all of them. Hence only 34 workmen were retained to cope up with the available work and 15 juniormost workmen including the Petitioner herein were retrenched lawfully. There is no violation of Section 25-F and 25-N of the Industrial Disputes Act. Hence the order of retrenchment of the Petitioner is valid and lawful and the claim is liable to be dismissed.

15. The points for determination are :

(1) Whether the termination order in respect of the Petitioner is lawful and just ?

(2) To what relief the Petitioner is entitled?

16. I.D. No. 6 of 1989 is connected with I.D. No. 59 of 1989 and I.D. No. 60 of 1989, in that common questions of law and facts are involved. All the Petitioners concerned in these three Industrial Disputes have filed Miscellaneous Application No. 13 of 1991 praying for the passing a common award. The said application was allowed and hence common award is passed by clubbing the I.D.s.

17. POINTS 1 and 2 in I.D. No. 6 of 1989—No oral evidence has been let in. Exts. W-1 to W-5 and M-1 to M-16 were marked by consent. The conciliation failure report in respect of Thiru M. Paramasivam, fourth Petitioner in this dispute is Ex. W.1. and the conciliation failure report as to the third Petitioner Thiru M. Thangaraj is Ex. W-2. Copy of the order retrenching the first Petitioner Thiru K. Kaliyamoorthy with effect from 20-2-1986 afternoon is marked as Ex. M-1. It conveys that the work on which Thiru Kaliyamoorthy was working as a casual labourer, has been completed as on 20-2-1986 and hence his services are no longer required. The worker Thiru Kaliyamoorthy on whom Ex. M-1 was attempted to be served on 22-2-1986 has given the letter dated 22-2-1986 to Permanent Way Inspector, Kurinjipadi. Copy of this letter signed by Thiru Kaliyamoorthy is found enclosed with the counter. This worker along with the three other workers concerned in this industrial dispute besides the two workers who raised Industrial Dispute Nos. 59 of 1989 and 60 of 1989 were all engaged as casual worker|gangman under different Permanent Way Inspectors. Even though all these casual labourer|gangman have been given temporary status, they are not permanent railway employees according to the Respondent. The Petitioners have not shown any rule or provision of law to prove that they are Permanent employees. Hence the Respondent (i.e.) Senior Personnel Officer of the Tiruchirapalli Division of Southern Railway who is the employee in respect of these workmen is competent to retrench them by paying them one month's pay in lieu of notice and retrenchment compensation in accordance with Section 25-F of the Industrial Disputes Act. The total days of service of Thiru Kaliyamoorthy are furnished in Ex. M-3. The retrenchment order in respect of the second Petitioner Thiru D. Kaliarayvam and his service details are marked as Exs. M-6 and M-7. The retrenchment order and the list showing the number of working days for the third Petitioner Thiru M. Thangaraj are Exs. M-10 and M-11. The retrenchment order and the list of working days in respect of fourth Petitioner Thiru M. Paramasivam are Exs. M-14 and M-16. The calculation sheets showing the amount of retrenchment compensation based on the length of service of these four workers are marked as Exs. M-4, M-8, M-12 and M-15 respectively.

18. It is the case of the Respondent that the work within the jurisdiction of one Permanent Way Inspector constitute a separate unit and that seniority of the workers working under a particular Permanent Way Inspector is maintained as a separate unit without combining the units of various Permanent Way Inspectors into a single pool for maintaining a common list of seniority. If such is the case we have to treat the unit of every Permanent Way Inspector and number of casual labour|gangmen working under him as a distinct establishment for the purpose of applying Section 25-F or 25-N as the case may be. All these workmen have been working under the Permanent Way Inspector Kurinjipadi at the time of retrenchment. The list for all such casual labour|gangmen who were working under Kurinjipadi Permanent Way Inspector, Ex. M-2 contains 50 workers. The retrenched casual labourers are shown to be the juniormost workmen. The total number of the workmen in this unit is 50 and hence Section 25-N of the Industrial Disputes Act which will apply only to a unit employing more than 100 workers cannot be made applicable to the Permanent Way Inspector, Kurinjipadi. It follows that Section 25-F and Chapter V-A of the Industrial Disputes Act alone should be applied in retrenching these workmen and not Section 25-N. Under Section 25-F it will be sufficient if the workmen is given one month's notice or one month's wages along with compensation equivalent to the total of 15 days average pay for every one year of continuous service. The amounts of retrenchment compensation calculated as shown in Exs. M-4, 8, 12 and 15 are found to be correct. The workers have not come forward to give any oral evidence regarding the Respondent's

offer to pay compensation besides one month's notice pay. I therefore accept the contention of the employer that while they offered one month's pay and compensation, the workmen refused to accept the same but claimed that they be given continuous work. When there is no work on hand or a particular work comes to an end the Permanent Way Inspector has no option other than resorting to retrenchment of the workmen and based on his report, the Senior Divisional Personnel Officer passed orders of retrenchment of the surplus workmen. I therefore hold that the Petitioners have refused to accept notice pay for one month and retrenchment compensation which were really offered by the employer (i.e.) Senior Divisional Personnel Officer, Tiruchirapalli and that therefore the retrenchment orders in the case of the four Petitioners are valid and just. These Petitioners can realise one month's pay and the compensation by directly approaching the Senior Divisional Personnel Officer or by filing a claim petition. In any view, they are not entitled to be reinstated under an award of this Tribunal. As and when new works or projects are undertaken, the Respondents have promised to employ these Petitioners as casual workers and when such opportunity arises, the Petitioners can avail the same. They are not entitled to any relief in this industrial dispute. Accordingly I answer these points against the Petitioners.

19. In the result, this industrial dispute is dismissed. No costs.

20. POINTS 1 and 2 IN I.D. 59/89.—No oral evidence has been let in. Exs. M-1 to M-5 were marked by consent. The Petitioner Thiru S. Ravindran has been retrenched under Ex. M-1 according to Respondent for want of work (i.e.) on completion of work on hand and since he was only a casual worker|gangman liable to be retrenched. Retrenchment was given effect on the afternoon of 20-2-1986. Some more casual workers|gangmen have also been retrenched at about the same time. The rank number of the Petitioner Thiru S. Ravindran is 44 in the seniority list of casual workers, marked as Ex. M-2. On the whole, the Petitioner Thiru S. Ravindran has worked for 937 days (actual number of working days) and the number of his working days in the crucial year 1986 is just 81 as shown by Ex. M-5. The retrenchment compensation calculated as payable to Thiru S. Ravindran is Ex. M-4. It is common case that the Petitioner refused to receive compensation for one or other reason when he declined to sign a letter given to him by the Permanent Way Inspector, Kurinjipadi. Copy of this letter to the marking of which the Petitioner has objected, is attached to Ex. M-1.

21. The retrenchment order Ex. M-1 conveys the fact that the work on which the Petitioner has been engaged has been completed and hence the retrenchment. The main ground urged by the Petitioner is that Chapter V-B and in particular Section 25-N thereof must be applied in effecting retrenchment and when applied so be ought to have been given three months notice or equivalent notice pay, but the Respondent has wrongly applied Section 25-F only and hence the retrenchment is illegal. The Petitioner as a casual gangman employed with reference to a particular work of a casual nature under the jurisdiction of Permanent Way Inspector, Kurinjipadi cannot be considered to be an employee under the Southern Railways for all practical purposes. Considering the Permanent Way Inspector's jurisdiction alone, the number of workmen under him is far less than 100 and hence I think it will be proper to treat every Permanent Way Inspector's unit as a separate establishment for the purpose of retrenchment and not the entire railway. Then we have to apply only Section 25-F of Chapter V-A of the Industrial Disputes Act to the exclusion of Section 25-N. The retrenchment procedure with particular reference to giving notice of a particular duration, the Respondent was not bound to follow Section 25-N. The Petitioner has not justified his refusal to accept the compensation offered. I do not see any merit in the Petitioner's contention that his juniors have been retained in service when he was retrenched. It is open to the Petitioner to claim one month's notice pay under Section 25-F of the Industrial Disputes Act and the compensation due to him by directly approaching Senior Divisional Personnel Officer or by filing a claim petition. I hold that the Petitioner Thiru S. Ravindran is not entitled to the relief of reinstatement. The points are decided against the Petitioner Thiru S. Ravindran.

22. In the result, this industrial dispute is dismissed. No costs.

23. POINTS 1 and 2 IN ID. 60/89.—No oral evidence has been let in. Exs. M-1 to M-5 were marked by consent. The Petitioner Thiru M. Ponnusamy has been retrenched under Ex. M.1. According to Respondent for want of work, or on completion of work on hand and since he was only a casual worker-gangman liable to be retrenched, retrenchment was ordered with effect from the afternoon of 20-2-1986. Some more casual workers-gangman have also been retrenched at about the same time. The rank number of the Petitioner Thiru M. Ponnusamy is 20 in the seniority list of casual workers, marked as Ex. M-2. On the whole, the Petitioner Thiru M. Ponnusamy has worked for 776 days (actual number of working days) and the number of his working days in the crucial year 1986 is 50 as shown by Ex. M-5. The retrenchment compensation calculated as payable to Thiru M. Ponnusamy is Ex. M-4. It is common case that the Petitioner refused to receive compensation for one or other reason when he declined to sign a letter given to him by the Permanent Way Inspector, Kurinjipadi. Copy of this letter to the marking of which the Petitioner has objected is attached to Ex. M-1.

24. The retrenchment order Ex. M-1 conveys the fact that the work on which the Petitioner has been engaged has been completed and hence the retrenchment. The main ground urged by the Petitioner is that Chapter V-B and in particular Section 25 N must be applied in effecting retrenchment and when applied so he ought to have been given three months notice or equivalent notice pay, but the Respondent has wrongly applied Section 25-F only and hence the retrenchment is illegal. The Petitioner as a casual gangman employed with reference to a particular work of a casual nature under the jurisdiction of Permanent Way Inspector, Kurinjipadi cannot be considered to be an employee under the Southern Railways for all practical purposes. Considering the Permanent Way Inspector's jurisdiction alone, the number of workmen under him is far less than 100, and hence I think it will be proper to treat every Permanent Way Inspector's unit as a separate establishment for the purpose of retrenchment and not the entire railway. Then we have to apply only Section 25-F of Chapter V-A of the Industrial Disputes Act to the exclusion of Section 25 N. The retrenchment procedure with particular reference to giving notice of a particular duration, the Respondent was no bound to follow Section 25 N. The Petitioner has not justified his refusal to accept the compensation offered. I do not see any merit in the Petitioner contention that his juniors have been retained in service when he was retrenched. It is open to the Petitioner to claim one month's notice pay under Section 25-F of the Industrial Disputes Act and the compensation due to him by directly approaching Senior Divisional Personnel Officer or by filing a claim petition. I hold that the Petitioner Thiru M. Ponnusamy is not entitled to the relief of reinstatement. The points are decided against the Petitioner Thiru M. Ponnusamy.

25. In the result, this industrial dispute is dismissed. No cost.

Dated, this 26th day of September, 1991.

THIRU M. GOPALASWAMY, Industrial Tribunal

In I.D. No. 6/89

WITNESSES EXAMINED

For both sides : None

DOCUMENTS MARKED

For workmen :

Ex. W-1/28-4-88—Conciliation Failure Report with regard to Thiru M. Paramasivam.

W-2/28-4-88—Conciliation Failure Report with regard to Thiru M. Thangaraj.

W-3/28-4-88—Conciliation Failure Report with regard to Thiru S. Ravindran.

W-4/28-4-88—Conciliation Failure Report with regard to Thiru M. Ponnusamy.

W-5/15-9-87—Copy of counter filed by the Management before the Central Administrative Tribunal, Madras in O.A. No. 729/86.

For Management :

Ex. M-1/20-2-86—Termination order issued to Thiru K. Kaliamurthy (xerox copy).

M-2/14-2-86—Seniority list of casual gangmen & daily rates of PWI/KJPD Section as on 20-1-86 (xerox copy).

M-3—Statement showing no. of days worked by K. Kalaimurthy from 20-11-74 to 20-1-86 (xerox copy).

M-4—Calculation sheet for retrenchment compensation payable to Thiru K. Kaliamurthy (xerox copy).

M-5—Statement showing no. of days worked by Thiru K. Kaliamurthy during the years 1974, 1982 to 1986 (xerox copy).

M-6/20-2-86—Termination order issued to Thiru D. Kaliaperumal (xerox copy).

M-7—Statement showing no. of days worked by Thiru D. Kaliaperumal from 21-11-78 to 20-2-86 (xerox copy).

M-8—Calculation sheet for retrenchment compensation payable to Thiru D. Kaliaperumal (xerox copy).

M-9—Statement showing no. of days worked by Thiru D. Kaliaperumal during the years 1978, 1979, 1982 to 1986 (xerox copy).

M-10—Termination order issued to Thiru M. Thangaraj (xerox copy).

M-11—Statement showing no. of days worked by Thiru M. Thangaraj (xerox copy).

M-12—Calculation sheet for retrenchment compensation payable to Thiru M. Thangaraj (xerox copy).

M-13—Statement showing no. of days worked by Thiru M. Thangaraj during the years 1978, 1979, 1982 to 1986 (xerox copy).

M-14/20-2-86—Termination order issued to Thiru M. Paramasivam (xerox copy).

M-15—Calculation sheet for retrenchment compensation payable to Thiru M. Paramasivam (xerox copy).

M-16—Statement showing no. of days worked by Thiru M. Paramasivam during the year 1977 to 1986 (xerox copy).

In I.D. No. 59/89

WITNESSES EXAMINED

For both sides : None

DOCUMENTS MARKED

For Workman : Nil

For Management :

Ex. M-1/20-2-86—Termination order issued to Thiru S. Ravindran (xerox copy).

M-2/14-2-86—Seniority list of casual gangmen and daily rates of PWI/KJPD section as on 20-1-86 (xerox copy).

M-3—Statement showing no. of days worked by Thiru S. Ravindran from 22-11-79 to 20-2-86 (xerox copy).

M-4—Calculation sheet for retrenchment compensation payable to Thiru S. Ravindran (xerox copy).

M-5—Statement showing actual no. of days worked by Thiru S. Ravindran during 1979, 1981 to 1986 (xerox copy).

In I.D. 60/89

WITNESSES EXAMINED

For both sides : None

DOCUMENTS MARKED

For workman : Nil

For Management :

Ex. M-1/20-2-86—Termination order issued to Thiru M. Ponnusamy (xerox copy).

M-2/14-2-86—Seniority list of casual ganmen and daily rates of PWI/KJPD section as on 20-1-86 (xerox copy).

M-3—Statement showing number of days worked by Thiru M. Ponnusamy from 21-5-71 to 20-2-86 (xerox copy).

M-4—Calculation sheet for retrenchment compensation payable to Thiru M. Ponnusamy (xerox copy).

M-5—Statement showing actual no. of days worked by Thiru M. Ponnusamy during the years 1974, 1978, 1979, 1981 to 1986 (xerox copy).

नई दिल्ली, 21 जून 1992

का. आ. 2162.—ओर्डोरिंग विवाद मधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार इंसिटिउट इंजीनियर (गिलिन) पोस्टल मिलिश मब डिवीजन II, नई दिल्ली 1 के प्रबन्धसभा के संबद्ध नियोजकों और उनके कर्मचारों के बीच, धन्यवाच में निर्दिष्ट ओर्डोरिंग विवाद में ऐसौंप सरकार ओर्डोरिंग मधिकरण नई दिल्ली के प्रधान से प्रकाशित करनी है, जो फैलोर गरकार की 16-7-92 का प्राप्त मुद्रा था।

[स. एल—40012/95/88-डी 2 (बी) (पी ई)]
के. बी. डी. उल्ला, ईक्य प्रधिकारी

New Delhi, the 21st July, 1992

S.O. 2162.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial disputes between the employers in relation to the management of Asst. Eng. (Civil) Postal Civil Sub-Division II, New Delhi and their workmen, which was received by the Central Government on 16-7-92.

[No. 40012/95/88-D.II(B)(Pt.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 86/89

In the matter of dispute between :

Shri Surender Kumar Sharma & Shri Pandey Shyam Sharma through Shri C. B. Sharma, 707-A/43, Tri Nagar, Delhi-110035.

VERSUS

Assistant Engineer (Civil),
Postal Civil Sub Division-III,
Dak Tar Bhawan, New Delhi-110001.

APPEARANCES:

None for the workman.

Shri M.D. Mittal for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. I-40012/95/88-D.2(B) dated Nil has referred the following Industrial Dispute to this Tribunal for adjudication :

"Whether the action of A. it. Engineer (Civil), Postal Civil Sub-Division-III, Dak Tar Bhawan, New Delhi in terminating the services of Shri Surender Kumar Sharma, Daily wages labourer w.e.f. 21-4-87 is justified? If not to what relief the workman is entitled?"

2. Surender Kumar workman in his statement of claim alleged that he was originally employed as a casual labourer beledar on daily wages w.e.f. 15-10-84. He continued to work there upto 20-4-87 and his services were terminated on that day abruptly. He requested many times to the management to take him into the employment but was told that there was no vacancy for daily rated Mazdoor. Hence this reference.

3. The Management in its reply alleged that the workman was beledar on daily rate basis. He was not employed against any regular vacancy and services were terminated after giving him regular cum notice. There was no ground to reinstate the workman.

4. The workman did not appear in this case in support of his evidence while the management examined Shri M. D. Mittal, Assistant Engineer MW 1 who filed affidavit MW 1 wherein he has reiterated what was alleged in the written statement.

5. I have heard representative for the management and have gone through the record.

6. The workman has not come into the witness box to support his statement of claim and there is nothing on record to suggest that his termination was illegal. The Assistant Engineer MW 1 has filed a sworn affidavit and has made statement on oath and the workman did not come to cross-examine the management witness. From the evidence of the management witness and the record of this case I am of the opinion that the workman was a daily rated mazdoor and that no right had vested in him for regular employment with the management. He was given a notice as per affidavit of the Assistant Engineer which has not been controverted. I, therefore, hold that the termination of the services of Shri Surender Kumar was according to the rules and no illegality has been committed by the management. The workman was not entitled to any relief in this case. Parties are however, left to bear their own costs.

June 23, 1992

GANPATI, SHARMA, Presiding Officer

नई दिल्ली, 21 जून 1992

का. आ. 2163.—ओर्डोरिंग विवाद मधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार नव डिवीजनल इंसेक्टर (पोस्ट), मलकापुर के प्रबन्धसभा के संबद्ध नियोजकों और उनके कर्मचारों के बीच, प्रत्यवाप में निर्दिष्ट ओर्डोरिंग विवाद में केंद्रीय सरकार ओर्डोरिंग विवाद में 2, वर्षाई के पंचांग को प्रकाशित करनी है, जो फैलोर सरकार ने 20-7-92 का प्राप्त मुद्रा था।

[स. एल—40012/95/89—डी 2 (बी) (पी ई)]

के. बी. डी. उल्ला, ईक्य प्रधिकारी

New Delhi, the 21st July, 1992

S.O. 2163.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2 Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sub-Divisional Inspector (Post) Malkapur and their workmen, which was received by the Central Government on 20-7-1992.

[No. L-40012/35/89 D.II(B)(Pt.)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 BOMBAY.

PRESENT

Shri P. D. APSHANKAR

Presiding Officer

REFERENCE NO. CGIT-2/23 OF 1989

PARTIES :

Employers in relation to the management of Sub-Divisional Inspector (Post), Malkapur.

AND

Their Workmen

APPEARANCES :

For the Employer : Mr. G. R. Thakur, Representative.

For the workman : Mr. V. K. Sule, Representative.

Industry : Post and Telegraph
State : Maharashtra

Bombay dated the 30th June 1992

AWARD

The Central Government by their order No. L-40012/85/88-D-2(B) dated 27-7-1989 have referred the following industrial dispute to this Tribunal for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947.

"Whether the action of the Sub-Divisional Inspector (Post) Malkapur, in terminating the services of Shri Rameshwar Vishnu Sushir, EDA w.e.f. 16-1-1987, is justified? If not, what relief he is entitled to, and from what date ?".

2. The case of the workman Shri R. V. Sushir, as disclosed from the statement of claim (Ex. 2) filed on his behalf by his representative Shri V. K. Sule, in short is thus :

The said workman Shri R. V. Sushir was appointed as Extra Departmental Delivery Agent (EDDA) at the Sub Post Office, Chandur Biswa by the Sub-Divisional Inspector (Post) Malkapur on 2-4-1986, and he worked there continuously for 289 days upto 15-1-1987. His services were terminated orally on 16-1-1987 by the management of the post office, and he was asked not to attend to his duties from 16-1-1987. No reasons were given for the termination of his services. Further, no notice, or one month's pay in lieu of notice and no retrenchment compensation was paid to him at the time of the termination of his service, as contemplated under Section 25F of the Industrial Disputes Act. After the services of the workman were terminated with effect from 16-1-1987, some other workman by name Shri S.O. Gole, who was junior to the workman, was appointed in his place as EDDA with effect from 10-9-1987, and thus, injustice was caused to the workman. The workman made several efforts, and requested the management to take him back in service, but his request was not considered by the management. Thereafter the Assistant Labour Commissioner was approached in the matter. As the conciliation proceedings ended in failure, the Central Government made the Reference, as above. The workman therefore lastly prayed that this Tribunal should direct the management of the Postal Department to reinstate him in service as EDDA with effect from 16-1-1987 with full back wages and the continuity of service.

3. The Sub Divisional Inspector (P) Malkapur by his written Statement (Ex. 3) opposed the said claim of the workman, and in substance contended thus :

No Industrial dispute existed or exists between the workman and the Postal management. The workman was never appointed as EDDA at Chandur Biswa by the

postal authority. He was working only as a substitute on behalf of and on the responsibility of Shri D. M. Joshi, the EDDA, Chandur Biswa, and Shri Joshi was then working as a group 'D' employee at Malkapur from 2-4-1986 to 16-1-1987. As such the said workman Shri Sushir was working as a substitute in the leave vacancy of Shri Joshi during the said period. No regular appointment order was given to the workman by the postal authority. Shri Joshi, after taking leave for his post as EDDA at Chandur Biswa, was working as a group 'D' employee at Malkapur, and he had provided the substitute i.e. the workman, at his responsibility. As per the rules of the Postal Department, Whenever an EDDA goes on leave, a substitute is to be offered by him, and the substitute offered by him may be accepted by the postal authority provided the EDDA makes the declaration taking responsibility for the workman, and the conduct of his substitute during his absence. As the said workman Shri Sushir was never appointed by the postal authority, there was no question of the termination of his service by the postal authority. The said workman was working during the said period of 2-4-1986 to 16-1-1987 only as a substitute on the sole responsibility of Shri D. M. Joshi, EDDA of Chandur Biswa. It is not true that the services of the workman Shri Sushir were illegally terminated by the Postal Management. The regular EDDA Shri D.M. Joshi was promoted on regular basis as a Group 'D' Official with effect from 20-7-1987, and the vacancy created by him was filled in by the postal authority by appointing Shri S. O. Gole, after completing the necessary service appointment formalities. The postal authority had informed the Employment Exchange about the vacancy of the post of the EDDA at Chandur Biswa. Certain six candidates including the workman Shri R. V. Sushir, had applied for the post of EDDA. Shri S. O. Gole belongs to the Schedule Caste Committee. Further Shri Gole possessed higher Educational qualifications and hence Shri Gole was appointed in the vacancy created by Shri D.M. Joshi with effect from 20-7-1987. The workman in question therefore had and has no claim for the said post. The postal authority therefore lastly prayed for the rejection of the prayer of the workman.

4. Issues framed at Ex. 4 are :

- (1) Whether the termination of service of the workman Shri R. V. Sushir is not valid, legal and proper ?
- (2) If so, to what relief he is entitled ?
- (3) What Award ?

5. My findings on the said issues are :

- (1) Valid and legal.
- (2) Nil.
- (3) Award as per below.

: REASONS :

6. The said workman Shri R. V. Sushir filed his affidavit (Ex. 19), and that of Shri P. Y. Borle, the sub post master Chandur Biswa (Ex. 21) in support of his case. Both these witnesses were cross examined on behalf of the management. The postal management filed the affidavit of abovesaid Shri D. M. Joshi (Ex. 23), and that of Shri S. A. Singare (Ex. 25), in support of their case, and these two witnesses were cross examined on behalf of the workman.

7. According to the postal authority, no industrial dispute existed in the present case, and no relationship of a workman and the employer existed between the said workman and the postal management. I, however, find that an industrial dispute existed in the present case, and that the relationship of a workman (employee) and the employer existed in the present case between the said workman and the postal authority. According to the workman, he was retrenched from the postal service. I, however, find that the termination of his service did not amount to retrenchment, but it fell within the scope of Section 2(oo) (bb) of the Industrial Disputes Act. The abovesaid conclusions can safely be

arrived on the basis of the documentary evidence, which is as follows :

8. Ex. 5 is a copy of the certificate issued by the Sub Post Master, Chandur Biswa, dated 28-7-1987 which stated that the abovesaid workman Shri R. V. Sushir of Chandur Biswa worked as EDDA at Chandur Biswa with effect from 2-4-1986 to 15-1-1987 and also in the casual leave period of the regular EDDA. Thus the abovesaid workman had worked for 289 days during the period of 2-4-1986 to 15-1-1987 as EDDA at Chandur Biswa Post Office.

Ext. 6 is a copy of the application dated 1-1-1987 addressed to the Postal Inspector, Malkapur, by Shri D. M. Joshi. He had applied for leave during the period of 1-1-1987 to 15-1-1987 and he further stated in his application that in his absence his responsibility will be shouldered by Shri R. V. Sushir, i.e. the workman in question.

Ex. 7 is another application for leave by Shri D. M. Joshi for the period of 1-10-1986 to 31-12-1986. In this application also, he had stated that Shri R. V. Sushir will shoulder his responsibility in his absence.

Ex. 8 is a letter dated 8-1-1987 by the workman Shri Sushir addressed to the Post Master Beldhana. In this letter the said workman stated that he had got the pay for the months of April, May, June and July 1986, but that he did not get his pay for the months of August to December 1986, and that he be paid his pay at the earliest. It is thus quite clear from this letter that as the pay of the said workman Shri Sushir for the months of April to July, 1986 was paid by the Postal Authority, the said workman was working under the control and supervision of the postal authority, and as such the relationship of the employee and the employer existed between the said workman and the postal authority.

Ex. 9 is an order passed by the Superintendent of Post Office Beldhana, dated 19-1-1988 sanctioning the leave of abovesaid Shri D. M. Joshi of the period from 1-7-1986 to 28-9-1986. It was further mentioned in that order that the appointment of Shri R. V. Sushir, i.e., the workman in question as his substitute is approved, and that the services of the substitute may be discharged by the appointing authority at any time without assigning any reason. As such, the relationship of an employee and employer did exist between the said two parties. Further, it is quite clear from the said order and the other similar orders passed by the postal authority from time to time that the said workman Shri R. V. Sushir was appointed in the leave vacancy of Shri D. M. Joshi only on casual and temporary basis, and that his services were to be terminated at any time. Therefore the said workman was in the services of the postal authority only on temporary basis, and not on regular basis.

Ex. 10 is an application by Shri D. M. Joshi dated 1-7-1986 for his leave from 1-7-1986 to 31-7-1986, and in this application also, he stated that in his leave vacancy Shri Sushir will shoulder his responsibility.

Ex. 11 is another application dated 1-8-1986 for his leave from 1-8-1986 to 30-9-1986 and in this application also he stated that Shri R. V. Sushir will work in his post on his responsibility.

Ex. 12 is a further application dated 21-9-1986 by Shri D. M. Joshi stating that at his responsibility Shri R. V. Sushir is working in his place and henceforth the pay of Shri D. M. Joshi be drawn in the name of Shri R. V. Sushir, and be paid to him.

Ex. 13 is an order passed by the Inspector of Post Office, Malkapur, dated 31-5-1986 granting the leave of Shri D. M. Joshi from 24-5-1986 to 30-6-1986. This order further clearly stated that abovesaid Shri Sushir was a substitute already provided by Shri Joshi on his responsibility, that Shri Sushir will work as EDDA at Chandur Biswa for the abovesaid period (only), and that Shri R. V. Sushir is given to understand that he can be discharged from his duty at any time by the postal authority.

Ex. 14 is an application dated 24-5-1986 by Shri D. M. Joshi for his leave from 24-5-1986 to 30-6-1986, wherein he stated, as in the earlier applications, that in his absence his responsibility will be shouldered by Shri R. V. Sushir.

Ex. 15 is an order passed by the Inspector of Post Office, Malkapur, dated 9-5-1986 granting the leave of Shri Joshi from 8-5-1986 to 23-5-1986. This order also further clearly stated that the substitute Shri R. V. Sushir was liable to be discharged by the postal authority at any time without assigning any reasons.

Ex. 16 is again an application for leave dated 8-5-1986 by Shri D. M. Joshi for the period from 8-5-1986 to 23-5-1986. In this application also, Shri Joshi had stated that abovesaid Shri Sushir will work in his place on his responsibility.

Ex. 17 is an order dated 4-4-1986 passed by the Inspector of post office, Malkapur, sanctioning the leave of Shri Joshi from 2-4-1986 to 7-5-1986. This order also further clearly stated that the appointment of Shri Sushir as a substitute was approved on the clear understanding that the substitute may be discharged by the appointing authority at any time without assigning any reason. It is thus quite clear from the different applications for leave of Shri D. M. Joshi, and the different orders passed by the postal authority sanctioning the working of Shri Sushir as a substitute, that the said workman Shri Sushir was working only on temporary basis from time to time during the vacancy of Shri D. M. Joshi, and that he was never appointed on regular basis in the services of the postal authority. Shri Sushir was put in services of the postal authority only so long as Shri Joshi was put on leave, and thereafter he ceased from the services. As such the termination of the services of the workman Shri Sushir did not amount to retrenchment but that it fell within the scope of Section 2(oo) (bb) of the Industrial Disputes Act.

9. Under Section 2(oo) of the Industrial Disputes Act, "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include the termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or a such contract being terminated under a stipulation in that behalf contained therein". As the said workman was being appointed from time to time only as a substitute on contractual basis only and such contract coming to an end on the last day of that contract service. I find that the termination of the services of the said workman Shri R. V. Sushir clearly fell within the scope of (bb) of Section 2(oo) of the Industrial Disputes Act, 1947 and as such, the said workman was not retrenched from the services of the postal authority, but that his services were terminated simpliciter. Therefore, as he said workman was not retrenched from services of the postal authority, he is not entitled to reinstate in services or any other relief, as claimed by him. After Shri Joshi was promoted as a group 'D' official at Malkapur with effect from 20-7-1987, Shri S. O. Gole was appointed in his place. As the said workman Shri Sushir was not retrenched as such from the services of the postal authority, he was not entitled to the services as EDDA in preference to Shri Gole in the vacancy caused by Shri Joshi with effect from 20-7-1987. Further, apart from that according to the postal management, Shri Gole was a member of the Scheduled Caste community, and had possessed higher educational qualifications than those of the workman in question and hence Shri S. O. Gole was appointed in that post. This contention of the postal management is also acceptable. In the result, I find that the action of the postal management in terminating the services of the workman Shri Sushir EDDA with effect from 16-1-1987 is quite just, legal and proper.

Issue No. 1 is found accordingly. As such the said workman is entitled no relief.

10. The following Award is, therefore, passed.

AWARD

The action of the Sub-Divisional Inspector (Post) Malkapur in terminating the services of Shri Rameshwar Vishnu Sushir, EDDA w.e.f. 15-1-1987, is just legal and proper.

The parties to bear their own cost of this Reference.

P. D. APSHANKAR, Presiding Officer

नई दिल्ली, 21 जुलाई, 1992

पा. धा. 3164.—बीयोगिक विवाद प्रधिनियम, 1947 (1947 वा. 14) की धारा 17 के अनुसरण में, भौतिक सरकार उसरे नई दिल्ली के प्रबन्धालय के संबद्ध नियोजकों और उनके न्यायिकरों के बीच, अमरांशु में निविष्ट बीयोगिक विवाद में केन्द्रीय सरकार औयोगिक प्रधिकरण नई दिल्ली के प्रबन्ध को प्रकाशित करती है जो केन्द्रीय सरकार को 16-7-92 को प्राप्त हुआ था।

[न. एल.—41012/47/86-डी 2(बी) (पंटी)]

के. बी. बो. उण्णी, ईसा प्रधिकारी

New Delhi, the 21st July, 1992

S.O. 2164.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Railway, New Delhi and their workmen, which was received by the Central Government on 16-7-92.

[No. L-41012/47/86-D. II(B)(Pt.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 76/87

In the matter of dispute between :

Shri Shiv Kumar &/o Shri Mummu,
c/o General Mazdoor Lal Jhanda Union,
12/191, New Moti Nagar, New Delhi.

Versus

The Dy. C. S. T. I. R. W.,
Northern Railway Exchange Building,
Second Floor, D.R.M. Office, New Delhi.

APPEARANCES :

Shri C.P. Aggarwal for the workman.

Shri K. K. Kashyap for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-41012/47/86-D. II(B) dated 24-8-87 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the termination of services of Shri Shiv Kumar w.e.f. 5-6-1981 by the management of Northern Railway, New Delhi is legal and justified ? If not to what relief the workman is entitled to ?"

2. The workman in his statement of claim alleged that he had been in the employment of the management since 24-2-77 but was assigned the job of Operator. The nature of work and the working hours of the workman and his counterparts were placed in the proper scale were same and identical. The workman aforesaid was treated as daily rated[muster roll] casual employee and was paid wages as per minimum wages fixed and revised from time to time under the Minimum Wages Act for the category of Khalasi. Initially he was appointed at S.I.C. Office, Tilak Bridge from 24-2-1977 to 14-7-78 and transferred at Thompson Road, from 15-7-78 to 29-9-79 and again transferred to M.M. Paharganj from 29-9-79 to 14-3-1981 and from July 1981 he was again transferred to Hira Nagar, J. & K. The workman went on sanctioned leave on 10-6-81 to 17-7-81. On 17-7-81 when he became sick in his native village and the Doctor advised him complete bed rest he

sent an application for extension of leave and came back on 6-10-81 for joining his duty with medical certificate from 18-7-81 to 5-10-81. At that time one officer was also present at the site of Hira Nagar, J&K. He gave the medical certificate to the officer who tore off the certificate into pieces and was told that he had been dismissed and his services were no more required. The action of the management was wholly illegal and unjust, as he had been dismissed from service without affording any opportunity of being heard, no compensation was paid to him at the time of termination, juniors to him have been retained in service and the impugned termination was violative of section 25F, G and H of the I.D.Act. Hence this claim for reinstatement with full back wages.

3. In reply the management alleged that the workman was employed on 28-2-77 and not on 24-2-77 as stated by him. He was never assigned a job of Operator and was simply a daily rated casual Khalasi. He worked from 28-2-77 to 14-8-78. He was absent from duty w.e.f. 5-6-81 and did not go on any sanctioned leave from 10-6-81 as stated by him. He did not intimate regarding his absence from duty nor he applied for the leave or its extension. The management also denied of his having reported for duty on 6-10-81 alongwith a medical certificate from 18-7-81 to 5-10-81 or the said certificate was torn into pieces by the officer present at Hira Nagar. This was clearly a fabricated story. After having absented from duty on 5-6-81 he attended the office of TCI/TW, Northern Railway, Thompson Road, New Delhi in March, 82 and that also to collect his casual Labour card. No notice of termination was required in case casual worker who absents from duty as per railway rules. The grounds taken up by the workman in his statement of claim were baseless and he did not deserve any reinstatement.

4. The management in support of the case examined Shri S. B. Sharma Asstt. TW MWI and the workman himself appeared as WWI. Both the witnesses filed their affidavits also in support of their evidence.

5. I have heard representative for the parties and have gone through the record.

6. Representative for the management has urged that the workman had absented from duty w.e.f. 5-6-81 when he was transferred to Hira Nagar in J&K where he never reported for duty. He was never sanctioned any leave on the basis of which he went but had actually absented from duty and not got any medical certificate produced in the court. No injustice had been done to him as the absence from duty by a casual khalasi makes him liable to discharge from duty which does not entitle him for any protection under the Industrial Disputes Act. There is no force in what the workman has stated regarding his having submitted any medical certificate which was allegedly torn by any officer. He has not produced any proof of his having gone on any sanctioned leave or any medical certificate thereafter. If he was refused duty on his return from sickness he could have gone to higher authorities but he did not make any report against anyone for his refusal to take him on duty. It has also been proved on record that he was a khalasi with No. 101812 and he received his service card on 5-9-83 from the department. A copy of the letter dated 5-9-83 by the workman also says for issuance of a duplicate service card.

7. The workman representative on the other hand has urged that the services of the workman were illegally terminated and his statement on oath alongwith his affidavit corroborate that he was actually sick and his medical certificate which he had shown to his officer at Hira Nagar in J&K was torn by the officer. He had actually gone on sanctioned leave from 10-6-81 to 17-7-81 and thereafter he had fallen sick. He should have been taken into employment on his return and terminating his services without any notice or compensation was nothing but illegal and he deserves to be compensated with full back wages and reinstatement.

8. A careful perusal of the points urged by the representative for the parties and discussed above clearly establish that there is nothing on record to suggest that he had gone on any sanctioned leave from the department w.e.f. 10-6-81 to 17-7-81. There is also nothing on record to suggest that he had come with medical certificate and the said certificate

was torn by the officer concerned. The management has brought to my notice that rules regarding the treatment to daily rated/casual khalasis on their unauthorised absence. According to Government of India, Ministry of Railway, Railway Board letters dated 8-5-81 bearing No. E(NG)JI-77/CL/46 no notice was required for termination of services of the casual labour except when it was necessary under any statutory obligation. He had absented himself without any permission and had not reported for duty and it was clear cut case that he had abandoned his employment himself. Here is a notice dated 7-10-85 sent by the workman himself to the management wherein he has clearly stated that in July, 81 he was transferred to Hira Nagar in J&K wherein he got a leave sanctioned from 10-6-81 to 17-7-81 and went home. On expiry of leave he reported for duty on 6-10-81 but was not taken on duty. In this notice which has been described in the index attached therewith as a legal notice the story of his having fallen sick and having got medical certificate from the Doctor which he produced before any authority and was torn by the said authority does not find any mention. No proof of his sanction leave is there nor any medical certificate or copy of the same is on record. This clearly established that the story of medical certificate was nothing but a concocted one. This notice was sent by registered post and the photo copy of the acknowledgment has also been attached by the workman himself. There is another statement of claim filed by the workman mentioned in this index in his documents wherein the story of his medical certificate also find no mention. The management had replied to his letter dated 7-10-85 that due to his absence without any intimation his name was deleted from the roll. It appears that the story made by the workman regarding his absence based on sickness was concocted one and had no legs to stand upon. He had absented from duty without any justification or permission and as such his absence from duty could not be made a ground and as such his absence from duty could not be condoned. There is no illegality committed by the management in this case the benefit of which could be given to the workman. The termination of his service was legal and justified, and the workman was not entitled to any relief from this Tribunal. Keeping in view, however, circumstances of the case the parties are left to bear their own costs.

June 28, 1992

GANPATI SHARMA, Presiding Officer

मई विलासी, 21 जूलाई, 1992

का. पा. 2165.—बीघोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. ई. ओ. (फोन्स) बीकानेर के प्रबन्धतात्र के मंत्री नियोजकों और उनके कर्मकारों के द्वारा, अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकारण जयपुर के पंचपट द्वारा प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-92 को प्राप्त हुआ था।

[स. एल—40012/143/89—प्राई आर (सी. यू.) (पी.टी.)]
के. बी. बी. उण्णी, डेस्क अधिकारी

New Delhi, the 21st July, 1992

S.O. 2165.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of S.D.O. (Phones) Bikaner and their workmen, which was received by the Central Government on 16-7-92.

[No. I. 40012/143/89-IR(DU)(PT)]
K.V.B. UNNY, Desk Officer

अनुबंध

केन्द्रीय औघोगिक व्यायामिकरण, जयपुर

केस नं. नी आई टी० 19/91

रैफरेंस: केन्द्रीय सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल-40012/143/89-प्राई आर (सी.यू.) दिनांक 16-4-91
श्री श्री तिहु सुप्रति श्री बनो तिहु, 1-डो, पवनपुरी हास्किंग
बॉर्ड कालोनी, बोकानेर।

—राई

बनाम

एम०सी०ओ० फोन्स, बीकानेर।

—प्रार्थी

उत्तिष्ठत

माननीय व्यायामिक श्री जगतसिंहजी, आर०ए०ज०ए०

प्रार्थी की ओर से :

कोई हाजिर नहीं

प्रार्थी की ओर से :

श्री प्रवीण बलदेव

दिनांक अवाकृ :

23-5-1992

अवाकृ

प्रार्थी को ओर से कोई हाजिर नहीं है। विवादों को ओर से श्री प्रवीण बलदेव हाजिर हैं। प्रार्थी को ओर से इस प्रकारण में आज शहदत पेश होने या किसी न सी शहदत हाजिर है और न हो अधिक के कोई प्रतिनिधि। ऐसा प्रतीत होता है कि प्रार्थी इस केस में शक्ति नहीं ले रहा है। प्रत. मामले में जो डिस्ट्रूट प्रवार्ष पारित किया जाता है जो राज्य सरकार को प्रकाशनार्थ नियमानुसार देजा जावे।

जमस सिंह, पंडासोन अधिकारी

नई दिल्ली, 23 जूलाई, 1992

का०प्रा० 2166--बीघोगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रोक्षण एवं गुड नियंत्रण प्रबंड राजभाट, ललितपुर के प्रबन्धतात्र के संबद्ध नियोजकों और उनके कर्मकारों के द्वारा, अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकारण कालपुर के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार को 23-7-92 को प्राप्त हुआ था।

[सं० एल-42012/31/91-IR(DU)]
के०सी०ओ० उण्णी, डेस्क अधिकारी

New Delhi, the 23rd July, 1992

S.O. 2166.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Parikshan avam Gur Niyantara, Prakhand, Raj Ghat, Lalitpur and their workmen, which was received by the Central Government on 23-7-92.

[No. L-42012/31/91-IR(DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRI-
BUNAL PANDU NAGAR DEOKI PALACE ROAD,
KANPUR

Industrial Dispute No. 179 of 1991
In the matter of dispute between :

Sri Jandel Singh s/o Sri Pahar Singh r/o Khirki
Durwaja Chanderi District Guna (M.P.)

AND

Executive Engineer Parikshan avam (Gur Niyantrana Prakhand Rajghat Lalitpur (U.P.)

AWARD

1. The Central Government, Ministry of Labour, vide its Notification No. L 42012/31/91-I.R.(DU) dt. 23/27-9-91 has referred the following dispute for adjudication to this Tribunal :—

Kya Sahayak Abhiyanta Parikshan avam Gur Niyantrana Prakhand Rajghat Lalitpur ke Prabandhako dwara Sri Jandel Singh putra Sri Pahar Singh Bhutpurva Betar Sandesh Wahak ko dinank 17-7-1986 se nishkashit karna nyayochit hai ? Yadi nahi to sambandhit karmkar kis anutosh ke haqdar hai?

2. In this case the first date for filing of the claim statement was 23-12-91 on which date the workman sought adjournment and thereafter he has not turned up in the case. It, therefore, seems that the workman is not interested in the case.

3. Thus in the above circumstances a no claim award is given.

ARJAN DEV, Presiding Officer

महि दिल्ली, 27, जुलाई 1992

कानून 2167 -- भीड़ोगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में, भौतिक सरकार डायरेक्टर, एज्जियन कारबासम रिसर्च एंटीट्रायट, कैलासनाडु के प्रबन्धन संबंधियों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट भीड़ोगिक विवाद में भीड़ोगिक अधिकरण एनेसो के पंचायत की प्रकाशित करना है, जो केंद्रीय सरकार को 24-7-92 को प्राप्त हुआ था।

[सं. एस. 42012/38/89-मार्हि.मार (आ. १)]

केंद्रीय बोर्ड, द्वारका अधिकारी

New Delhi, the 27th July, 1992

S.O. 2167.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Alleppey as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Director, Indian Cardamom Research Institute, Kailasanadu and their workmen, which was received by the Central Government on 24-7-1992.

[No. L-42012/38/39-IR(DU)]
K. V. B. UNNY, Desk Officer.

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL ALLEPPEY

(Dated this the 1st day of July, 1992)

PRESENT :

Shri K. Kanakachandran, Industrial Tribunal.
I.D. No. 1490

BETWEEN

The Director, Indian Cardamom Research Institute, Kailasanadu P.O., Myladumpara-685553, Idukki District.

AND

The President, The Udumbanchola Estate Workers' Union, Pulimala P.O., Vandamedu-685555.

REPRESENTATIONS :

M.s. Joseph Vellappally & S. Siri Jagan, Advocates, Cochin-682018 —For Management.

Sri M. N. Radhakrishna Menon, Advocate, Warriam Road, Ernakulam.—For Workman.

AWARD

1. The dismissal of a workman viz., Cherian Mathew, Watchman in the Indian Cardamom Research Institute, Myladumpara, Nedumkandom is the issue for adjudication in this dispute.

2. The workman herein was charge-sheeted by the management by a proceedings dated 8-12-1986. Though an explanation was submitted by him, it did not satisfy the management. Hence a domestic enquiry was ordered on the charges levelled against the workman. Initially an official of the management establishment was appointed as the Enquiry Officer. In view of the pressure of work, the Enquiry Officer so appointed had expressed his inability to conduct the enquiry. In that circumstance, the management appointed a Lawyer of Nedumkandom, Aravindan Nair as the Enquiry Officer. The Enquiry Officer conducted a domestic enquiry against the workman on the basis of charges framed against him. After participating for sometime in the enquiry on 21-9-1987 the workman boycotted the enquiry. Therefore on the basis of the ex-parte evidence adduced by the management, the Enquiry Officer submitted a report to the management finding the delinquent guilty of the charges. Accepting the findings of the Enquiry Officer the management imposed the punishment of dismissal. The legality of that punishment is referred for adjudication in this dispute.

3. In the charge sheet dated 18-12-1986 it is alleged that the workman reported late on 6-12-1986 for the Watchman-work in the premises of the management establishment. The normal working time would start as 5 P.M. on that day, but he reported for duty only at 6.45 P.M. The Assistant Director (Farm) V. A. Abraham did not permit him to go for duty on that day since he was very late. Then the delinquent workman, it is alleged, shouted at the Assistant Director by using vulgar language against him. After sometime he left the scene. On the next day morning when the Assistant Director was waiting in a nearby bus stop for boarding a bus (in front of the management establishment) the workman went there and repeated the shouting of abusive language against him. The abusive words

uttered by the workman are quoted in the memo of charges and that reads :—

REGIONAL LANGUAGE:

4. The workman submitted an explanation to the above memo of charges. According to him, he had not used any abusive language. On that particular day viz., 6-12-1986 there was some trouble in the Estate on account of the changes effected by the management in the disbursement of salary in the weekend on Saturday. As the Convenor of the union he had to pacify the workers and everything was over at about 6.30 P.M. Therefore it was a bit late for reporting for work. Anyhow, the Supervisor permitted him to join duty but the Assistant Director V. A. Abraham shouted at him and tried to assault him. He had denied the incidents as alleged by V. A. Abraham in the evening on 6-12-1986 and 7-12-1986.

5. In the claim statement filed by the union, several contentions were raised against the punishment of dismissal. One of the contentions raised to nullify the order of dismissal is the legality of the enquiry which, according to the union, was conducted in clear violation of the principles of natural justice. On the merit of the issue it is contended that the delinquent workman was a prominent trade unionist in the estate and his union activities were not palatable to the management. Since he being an office bearer of the recognised trade union functioning in the estate he was a protected workman. Only by way of victimisation, certain charges were fabricated against him and that ended in his dismissal. It is also alleged that the disbursement of wages was subject to drastic change by the management without any notice to the workers and that was in clear violation of Section 9-A of the Industrial Disputes Act. When the workers were in agitating mood, in fact, the workman had pacified them and tried for an amicable solution. The interference of the workman in that dispute had infuriated the Assistant Director and that was the real reason for initiating disciplinary action against him.

6. Since the validity of the enquiry is challenged, that was taken as a preliminary issue and both sides were permitted to adduce evidence. After taking evidence, this Tribunal passed an order on the preliminary issue on 29-8-1991 holding the enquiry as valid and proper. The order is extracted hereunder :

(1) The issue referred for adjudication in this dispute is on the dismissal effected against one Cherian Mathew, an employee of the Indian Cardamom Research Institute, Myladumpara in Idukki District. The

workman was dismissed after conducting a domestic enquiry and that domestic enquiry was conducted by an Advocate of Peermade Bar viz., V. R. Aravindan Nair. After the conducting of the enquiry, the Enquiry Officer submitted a report to the employer with the finding that the charges framed against the workman were proved. Accepting the findings the workman was dismissed with effect from 25-1-1988.

- (2) In the claim statement filed by the workman among other things, it is contended that the enquiry was bad because it was conducted in violation of the principles of natural justice. A very serious allegation was also raised against the Enquiry Officer. According to the workman, the Enquiry Officer was highly biased because of his conduct. He had appeared in a case before the Labour Court, Ernakulam against him and that was in connection with his claim for subsistence allowance. Since the Enquiry Officer had appeared for the Management before the Labour Court, no fair treatment could be expected from him.
- (3) Although wild allegations are raised against the enquiry and the Enquiry Officer, it is admitted in the claim statement that he had co-operated initially with the enquiry. The adjournment sought by him were granted by the Enquiry Officer. When the enquiry was posted on 21-9-1987 at his request, he submitted a representation before the Enquiry Officer explaining his inability to co-operate further in the domestic enquiry proceedings. The reason pointed out by him was that the Enquiry Officer was representing the management against him in the subsistence allowance petition filed by him.
- (4) The management disputed the allegation of bias on the part of the Enquiry Officer. According to them, after affording enough opportunity to participate in the enquiry, The enquiry proceedings were initiated. It is also stated that the Enquiry Officer did not appear for the management in the petition filed by him for getting Subsistence Allowance. Only once he made representation before the Labour Court in that matter and that too while making representation in some other cases for the employer management.
- (5) The Enquiry Officer was examined as MW1 and the entire enquiry files were marked through him as Ext. M1. He has stated that after the starting of enquiry, one witness was fully examined. Cross-examination of MW1 was fully conducted. But when the second witness tendered evidence, he was not cross-examined fully. Then technical objections were raised by the workman questioning the very propriety of the conducting of enquiry by the Lawyer Aravindan Nair. On that allegation it is sworn to by the Enquiry Officer that only once he made

submissions before the Labour Court in respect of the petition filed by the workman and that itself was for seeking an adjournment. He never filed any vakalath for the management. He never filed any statement or argued any matter against the workman herein.

(6) Going through the materials on records as also the other facts it can be seen that the only ground urged against the enquiry is regarding bias on the part of the enquiry and that is in view of the submission made by him in the Labour Court in a petition filed by the delinquent for subsistence allowance. There is no case that this Enquiry Officer had appeared for the employer in any litigation wherein this workman was in the opposite side. Even in a case where a particular lawyer filed writ petition before the High Court in which one delinquent worker was involved and against whom the same lawyer conducted a domestic enquiry, the High Court observed that bias could not be attributed against that lawyer—Enquiry Officer [M. T. Joseph Vs. Labour Court, Ernakulam Writ Appeal No. 835/1986]. The High Court observed :

“As a general proposition, it is too late in the day to contend that because as person is some-times employed by the employer as a lawyer, he is thereby rendered incompetent to act as an Enquiry Officer”.

(7) In so far the enquiry conducted against the workman herein is concerned, the position has not reached to even situation dealt by the High Court. Merely because a representation was made for seeking an adjournment in a Court of law, it is too much to think that a Lawyer turned Enquiry Officer will be biased.

In the result, I hold that the enquiry conducted against the delinquent is valid and proper Preliminary issue is decided accordingly.”

7. In view of the pronouncement on the preliminary issue by holding the enquiry as valid and proper, the legality of the punishment of dismissal has to be evaluated with reference to the material on record.

8. Before going to the merit of the dispute, I wish to pronounce my view on one of the contentions raised by the union that the punishment of dismissal is ab initio void since it was imposed in violation of Sec. 33 of the I.D. Act. According to the union at the time when dismissal was effected, conciliation proceedings were pending on an industrial dispute in which the workman was also very much concerned. Since the workman was a protected workman at that time, the dismissal could have been validly affected only after seeking prior approval of the concerned conciliation authority. Since that was not done, the dismissal will not stand. On this plea raised by the union the management contends that the workman was never considered as a protected workman and to hold such a position, no recognition on that behalf

was given by the management at any time. Only if he was a protected workman duly recognised by the management in terms of Rule 62 of I. D. Rules, any kind of prior approval was required for effecting punishment of dismissal.

9. On the question whether the workman herein was a protected workman or not, both sides were permitted to adduce evidence after the passing of the order on preliminary issue relating to domestic enquiry. While examining the Secretary of the union, copies of the intimations regarding choice of the workman as one among the protected workmen were marked. Those are Ext. W2 to W6 sent by the President of the union at various dates during the years 1986 to 1990. Ext. W2 to W6 are the intimations addressed to the Director of the management establishment giving the names of 5 workmen who were office bearers and recognised by the union as protected workmen. Such intimations were given to the management to accord recognition to them as protected workmen. Relying on those intimations the union takes up the stand that the workman was a protected workman at the relevant time. In this context it is relevant to go through the provisions contained in the Industrial Disputes Rules, 1957.

10. Rule 62 of the Industrial Disputes Rules deals with the formalities to be complied with the parties concerned for conferring status of protected workman in an establishment. The Rule says that every registered union connected with an establishment shall communicate to the employer before 30th April every year the names and address of such Officers of the union who are employed in that establishment. On receipt of such intimation, the management will recognise such workmen as protected workmen subject to the condition stipulated in Sec. 33(4) of the I. D. Act. If such recognition is given, a workman will continue as a protected workman for a period of 12 months from the date of communication regarding recognition. The proviso to Rule 62(3) says that if there is more than one registered trade union in an establishment, the maximum number shall be distributed by the employer among the unions on proportionate basis. But the total number shall not in any case will exceed the maximum prescribed by Sec. 33(4). Any how, whether there was recognition or not, a communication on that behalf is mandatory.

11. As per Section 33(4) of I.D. Act maximum number of protected workmen allowable will be 1 per cent of the total strength subject to a minimum of 5 and maximum of 100. While going through the deposition of the Union Secretary (WW1) it can be seen that there were two unions. If one per cent of the total strength is taken into account, the number of protected workmen can be only two in the establishment while taking into account the total strength. Anyhow the minimum can be five. Since there were admittedly two unions, total number of protected workmen from both unions cannot exceed five. While going through the evidence in this case (Ext. W2 to W6) it can be seen that the unions concerned herein alone had sent the names of five workmen for recognition as protected workmen. Therefore, legally, it is not possible for the union to get recognition to five of its members as protected

workmen. Therefore no reliance can be placed on Ext. W2 to W6. Moreover there is also no material to show that communication regarding recognition was given to the union in which the workman is also recognised as a protected workman. Since the evidence adduced is against the contention of the union, there is no substance in their plea that dismissal of the workman was ab initio void. I sustain the contention of the management on the issue raised as to the status of the workman.

12. While going through the charges and the allegations raised therein, and also the evidence adduced, the management's stand is more or less vindicated. As stated earlier, the workman had projected a case that he had not done anything as alleged by the management. According to him, in fact, he was abused and tried to be assaulted by the Assistant Director V. A. Abraham. In this context it is relevant to go through the antecedent of the workman. If his antecedent was perfect, his contention would have been true or genuine to a greater extent. But here the position is otherwise. At the stage of domestic enquiry the management had produced all relevant documents which would bring to light the past deeds of the workman. In page 10 of the enquiry proceedings which is marked as Ext. M13, there is a submission made by the workman to the former Farm Manager of the management establishment. That is regarding admission of guilt submitted by him on 9-2-1979 about certain omissions and indisciplined acts. Ext. M11 marked at the enquiry is another submission dated 18-8-1982 in which the workman expressed regret over the incident relating the public quarrel between himself and his wife Leelamma Cherian. Ext. M12 is another submission given by him on 27-5-1983. In one portion of Ext. M2 it is stated like this :

REGIONAL LANGUAGE

13. Ext. M10 is also another submission dated 23-3-1986 regarding certain omissions on his part. These submissions were fraudulently obtained by the presence of witnesses. Therefore it cannot be said those submissions were fraudulently obtained by the management to substantiate their charges against the workman which ended in the present dismissal.

14. Ext. M7 is a show cause notice to him issued by the Deputy Director of the Management establishment in the year 1986. In that show cause notice also, allegation is about abusing by the delinquent in public place. Even when the Deputy Director reached the scene, the delinquent workman did not care to stop the using of filthy language in public. In that notice, he was warned that unless he mend his ways, disciplinary actions would be taken against him. Such a show cause notice was in December 1986. After about 9 months, the alleged incidents occurred which resulted in the present disciplinary action. All these documents relating to the previous records will only indicate that the workman is capable of committing misconducts as alleged in the charge memo.

15. V. A. Abraham, Asstt. Director against whom abuses were showered and filthy language was used by the delinquent is a senior official. He is also a disciplinary authority in so far as the workman herein

who is only a watchman. Since he is an affected party and the complainant, he chose to leave the disciplinary proceedings against the workman to his Superior by submitting a complaint. While considering the past record of the delinquent, the possibility of using filthy language by him even against senior official cannot be ruled out. If the past record was perfect, the allegations raised against him could have characterised as vindictive action. But in this case I do not find any reason to disbelieve the evidence tendered by management witnesses. A glance at depositions will only confirm the charge levelled against the workman. Since he being a union office bearer, he might have thought that he could behave in an obstinate manner even against his Superiors. According to me, this is not a fit case in which this Tribunal can invoke the provisions contained in Section 11-A of the I.D. Act. The management's action is sustained.

Award is passed accordingly.

(Dated this the 1st day of July, 1992)

K. KANAKACHANDRAN, Industrial Tribunal.

APPENDIX

(I. D. No. 1/90)

Witnesses examined on the side of the Management:—

MW1 : B. R. Aravindan Nair.

MW2 : R. Naidu.

Exhibits marked on the side of the Management :—

M1 : Enquiry File.

M2 : Copy of the letter dated 12-3-1988 from K. K. Devasia.

M3 : Letter No. 8(10)88/ALC/TVM dated 20-1-1989 from Asst. Labour Commissioner (C), Trivandrum.

Witnesses examined on the side of the Workman :—

WW1 : K. K. Devasia.

Exhibits marked on the side of the workman :—

W1 : Certified copy of the Memo of appearance filed by Sri. B. R. Aravindan Nair, Advocate in M. P. 178/87 before the Labour Court, Ernakulam.

W2 : Letter dated 15-6-1986 from the Union to Management.

W3 : Letter dated 7-3-1987 from the union to Management.

W4 : Letter dated 2-3-1988 from the Union to Management.

W5 : Letter dated 14-3-1989 from the Union to Management.

W6 : Letter dated 14-3-1990 from the Union to Management.

W7 : Copy of the minutes of the Labour Union Meeting held at ICRI, Myladumpara on 7-1-1988.

W8 : Letter No. 3(7) Fd/Lab/Admn/87/3205 dated 22-12-1987 from R. Naidu.

W9 : Letter No. 3(7)Fd|Lab|Admn|87|3104 dated 19-12-1987.

W10 : Letter No. 8(4)Res|86|878 dated 2-7-1986 from P. K. Zacharia.

W11 : Letter No. 3(7)Fd|Lab|Admn|87|3179 dated 31-12-1987 from V. A. Abraham.

नई दिल्ली, 27, जूलाई, 1992

कानूनी 2168—भौतिक विकास अधिनियम, 1947 (1947 का 14) की घरा 17 के अनुसरण में, केन्द्रीय सरकार विवेजनल रेलवे इंजिनियर, सेन्ट्रल रेलवे, ज्ञान के प्रबन्धन के संबद्ध नियोजकी और उनके कानूनीकारों के बाज, अनुरूप ने टिर्डिट औलंगिक विकास में केन्द्रीय सरकार भौतिक अधिकरण, कानूनुर के पश्चाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-7-92 को प्राप्त हुआ था।

[सं. प्रा. 41012/70/89-आई भार (शो. दू.)]
को. बी. वा. वा. २४८, बैस्ट अधिकारी

New Delhi, the 27th July, 1992

S.O. 2168.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Divisional Railway Manager, Central Railway, Jhansi and their workmen, which was received by the Central Government on 23-7-92.

[No. L-41012/70/89-IR(DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 302/89

In the matter of dispute between :

The President,
Rashtriya Chaturtha Shreni Rail Mazdoor
Congress Intuc 2/236 Namnair.
Agra.
AND
Divisional Railway Manager,
Central Railway,
Jhansi.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-41012/70/89 I.R. (D.U.) dated 28-11-89, has referred the following dispute to this Tribunal for adjudication :—

“Whether the Divisional Railway Manager Central Railway Jhansi was justified in terminating the services of Sri Mahesh Chand w.e.f. 22-3-88? If not to what relief the workman was entitled?”

2. The industrial dispute has been raised by Rashtriya Chaturtha Shreni Rail Mazdoor Congress (Intuc) Agra through its President. The case of the Union 1964 GI/92-7

is that the workman was engaged as a APM Khalasi on 14-6-85. By means of notice dated 9-3-88, his services were terminated illegally on the ground that the casual labour care produced by him at the time of his appointment regarding his previous service in the railway was found fake. This was done without holding an inquiry against him under the Rly. Servants (Discipline & Appeal) Rules, 1968. According to the Union there are instances where persons who had procured services in the railway on the basis of fake service cards were given fresh appointment. In fact in view of instructions contained in letter No. HPB 22513 of the C.P.O. dated 19-5-84, it was the duty of the Railway to have got verified the correctness of the entries of the service card within one month of his engagement. Vide D.O. No. HPP 22513/R/CLE dated 26-12-88 from C.P.O. (P) Head Quarters Bombay addressed to Sr D.P.O. Jhansi, the services of new faces engaged between 1980—1985 were regularised by Expost Facto sanction given by the Central Manager. The order of termination has also been challenged by the Union on grounds of violation of the provisions of section 25-G of the Industrial Disputes Act, 1947. The Union has, therefore, prayed that the notice dated 9-3-88 be quashed and the workman be reinstated in service with full back wages.

3. The case is contested by the management. The management plead that the railway administration is not an industry. The workman having obtained appointment on the basis of a fake service card, his appointment was void ab initio. In the circumstances there did not arise the question of conducting of departmental inquiry against him as under Railway Servants (Discipline & Appeal) Rules, 1968. Another plea raised by the management is that at the time when the Union raised this dispute, the workman was not the member of the said Union.

4. In the instant case neither side has led any oral evidence. On 28-5-92, it was stated clearly by the authorised representatives for the parties that the case did not require giving of any evidence by either side. However, some documents filed by the Union are on record. The question whether or not the railway is an industry was considered by me in a bunch of cases which were decided by me by one common award. These I.D. Cases are 94/89, 10/89, 25/89 etc., etc. In the said award I held that the railway run by Central Government is an Industry within the meaning of section 2(j) of the I.D. Act.

5. The copy of show cause notice has been filed by the Union with its claim statement. After stating the facts that on inquiry it has been found that the entries in the casual labour card filed by him are forged, he was called upon to explain within 15 days why his services should not be terminated. The giving of this notice has not been disputed by Sri Bhattacharya, from the side of the management.

6. Neither side has filed any order showing that on the basis of the aforesaid show cause notice any order terminating the services of the workman was ever passed by the competent officer on behalf of the railway. However, from the show cause notice it appears that the evidence on which the epicads was perused that the entries in the casual labour card produced by the workman at the time of appointment

are forged was not furnished to the workman. Thirdly, from the show cause notice it does not appear that he had worked intermittently and not continuously. Prima facie therefore he will be deemed to have acquired temporary status. Naturally therefore the the workman would be governed by Railway Servants (Discipline & Appeal) Rules, 1968.

7. For the above reasons the action of the management in terminating the services of the workman cannot be upheld. The management should have held an inquiry into the matter in accordance with the law. In view of the above findings the workman is entitled to his reinstatement. Ordinarily he should have also been held entitled to back wages but as has been held in the award dated 5-2-92, in the aforesaid bunch of I.D. cases back wages cannot be awarded to him. This was so held by me on the basis of decision given by the Central Administrative Tribunal Allahabad in registration (OA) No. 160/89, the copy of which was filed by Sri Surendre Singh the authorised representative for the workman in those cases. Hence back wages are disallowed to the workman.

8. Held that the action of the management in terminating the services of the workman is illegal. He shall be reinstated by the management within one month from the date of enforcement of the award but the workman will get no back wages. However, it is made clear that the management will be at liberty to conduct a proper inquiry into the matter in accordance with the principles of natural justice and law.

9. Reference is answered accordingly.

ARJAN DEV, Presiding Officer.

नई दिल्ली, 27, जूलाई 1992

कांस्टॉ 2169—श्रीधोगिक विवाद प्रबिनियम, 1947 (1947 का 14) की घारा 17 के अन्तर्गत मे, केन्द्रीय सरकार द्वारा परमात्मा धारकीसर, पूर्वोत्तर रेल्वे, गोरखपुर के प्रबन्धकार्यालय के संबंध नियोजको और उसके कानूनकारों के बीच, प्रत्यंबंध में निर्विट श्रीधोगिक विवाद में केन्द्रीय सरकार श्रीधोगिक विवाद कानून के पंक्तियों को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-7-92 को प्राप्त हुआ था।

[सं एल- 40012/43/83-D-II(B)/IR(DU)]
के. व. बै. उन्नी, ईस्क अधिकारी

New Delhi, the 27th July, 1992

S.O. 2169.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Chief Personnel Officer, Purvottar Railway, Gorakhpur and their workmen, which was received by the Central Government on 23-7-92.

[No. L-40012/43/83-D-II(B)/IR(DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL CUM LABOUR COURT PANDU
NAGAR KANPUR

Industrial Dispute No. 263 of 1989

In the matter of dispute between :

The General Secretary Purvottar Railway
Shramik Sangh 6 Navin Market Kaiserbagh
Lucknow.

AND

The Chief Personnel Officer Purvottar Railway
Gorakhpur.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-40012/43/83-D-2(B) dated 23rd October 1989 has referred the following dispute for adjudication to this Tribunal :—

“Whether the action of the Chief Signal & Telecommunication Engineer N R Gorakhpur in terminating the services of Sri Rakesh Kumar s/o Sri Chandra Shekhar Waterman w.e.f. 16-10-86 is legal and justified ? If not to what relief the workman concerned is entitled?”

2. The industrial dispute on behalf of the workman has been raised by Purvottar Railway Shramik Sangh Lucknow (hereinafter referred to as Union) through its General Secretary. The case of the Union is that the workman was appointed as a casual labour by A.P.O. Head Quarters Gorakhpur on 20-8-82. He had worked for 649 days upto 15-10-86 and thereafter he had worked continuously upto 14-4-88. His services were however terminated without any notice or notice pay and payment of retrenchment compensation w.e.f. 15-4-88. Therefore, the order of termination is void ab initio. The Union has, therefore, prayed for the reinstatement of the workman with full back wages and all consequential benefits.

3. In defence, the management plead that under the orders of the Railway Board no fresh appointment after 31-12-80 is permissible. In order to seek appointment in the Railways as a casual labour waterman the workman produced certain certificates showing that he had worked in the Railways during 1961-62, 1964 and 1966. On the basis of the said certificates he was appointed as a casual labour waterman on 20-8-82. However, on inquiry the said certificates were found as fake. Even in his application dated 12-11-80 for advance from provident fund in connection with the betrothal ceremony of the workman the father of the workman described the age of the workman as 16 years. The age so mentioned by the father of the workman in his said application thus showed that he was born in November 1964 rendering all the certificates produced by him in connection with the seeking of employment with the Railways as fake. As a casual labour waterman he worked till 15-10-86 whereafter keeping in view the demerits of the case he was not further engaged.

The management also plead that casual labour waterman are engaged only for Hot Weather Season. The work being for specified period, the provisions of section 25F I.D. Act, are not applicable to the case of the workman. Hence, the workman is entitled to no relief.

4. In its rejoinder, the Union has simply mentioned the period of working of the workman. The Union has however, said nothing with regard to the facts pleaded in the written statement how the workman obtained employment with the Railways and the age mentioned by the workman's father in his application for advance from G.P. Fund in connection with the betrothal ceremony of the workman.

5. In support of their respective cases both sides have led oral as well as documentary evidence. Whereas as the Union has examined the workman, the management have examined Sri Raja Ram Misra, Senior Personnel Officer.

6. In view of the date of termination mentioned by the Union in the claim statement and in the rejoinder the reference has become almost infructuous. From the reference order it appears as if the services of the workman had been terminated w.e.f. 16-10-86, whereas in the claim statement and in the rejoinder it has been alleged by the Union that the services of the workman had been terminated w.e.f. 15-4-88. No attempt had been made by the Union to seek necessary amendment in the reference order.

7. In the written statement it has been pleaded by the management as to how by producing false and fake certificates the workman procured employment with the Railways as a casual labour waterman. As stated by me above this fact has not been controverted by the Union in the rejoinder. To be more specific the Union has all together kept silent on the facts so pleaded by the management. Even the facts so pleaded in the written statement have not been controverted by the workman in his affidavit. Therefore in the absence of any specific denial from the side of the Union or the workman when the Union had an opportunity to admit or deny, the facts would be deemed to have been admitted by the Union/ workman.

8. The workman was examined by the Union on 11-2-91. He gave his age as 28 years. In his cross examination he has given his date of birth as 1-7-62. Therefore, the workman could not have wanted in the Railway in 1961-62, 1964 & 1966. It follows therefore, that he had produced service in the Railways fraudulently.

9. In his claim statement the Union has given the original date of appointment of the workman in the Railway as 20-8-82. However, in the rejoinder and the affidavit of the workman it is given as 2-8-80. At the time of evidence, through the evidence of the workman, the Union has tried to improve upon its case by showing that the workman had also worked in the Railways for 243 days during the period 16-12-79 to 15-9-80. The Union has sought to corroborate this fact from the entries in the casual 1964 GI/92-8.

labour card photostat copy of which alongwith 5 other documents was filed by Sri B. D. Tewari, the authorised representative for the Union on 19-11-90.

10. I have examined the casual labour card and find that the entries in it cannot be relied upon. Details which were to be given as regards facts mentioned at serial no. 4 and 5 are not found given against said serial Nos. Further it is not the case of the Union that the workman had worked from 16-12-79 to 15-9-80. Rather in the claim statement the Union has given the date of original appointment of the workman as 20-8-82. The fact that this is fake stands proved from the statements made by the workman in para 6 of his cross examination in the said para he has stated that he had not worked after 15-10-86. Thus it appears to me that at every stage the Union/ workman has tried to build up the case for the workman on fake documents.

11. From the above discussions of evidence it stands proved that the workman was initially engaged on 20-8-82 and he had worked till 15-10-86. From the evidence of the workman it will be clear that he had not worked continuously. In para 5 of his statement in cross examination the workman has deposed that he was being engaged as a casual labour waterman only during Summer Season. In para 6 of his statement he has referred to the following facts of his working :—

20-8-82 to 15-10-82
17-7-85 to 15-10-85
15-4-86 to 15-10-86.

He has clearly stated that after 15-10-82 he was engaged on 17-7-85.

12. It thus becomes abundantly clear that the workman was being engaged only during Summer Season as a casual labour waterman. Sri B. D. Tewari, the authorised representative for the Union has not shown me any Rule or any Provision of Law whereunder the workman will be deemed to have acquired any right to service in the Railways. So in the circumstances referred to above if he was not given fresh service as a casual labour waterman after 15-10-86, the action of the management cannot be challenged on any ground in a court of law.

13. Held therefore that the action of the Chief Signal and Telecommunication Engineer N.E.R. Gorakhpur in terminating the services of the workman w.e.f. 16-10-86 is perfectly legal and justified. The workman/Union is entitled to no relief.

14. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 27 जुलाई, 1992

कांगड़ा 2170--ओपोरिंग विद्यालय अभियान, 1947 (1947 का 14) की धारा 17 के प्रत्यरोग में, केन्द्रीय सरकार औपोरिंग विद्यालय बॉर्ड परिषद, राजस्थान, ललितपुर के प्रबन्धनात्मक के संबंध नियोजकों और उनके कामकारों के बीच, प्रनवेश में निविष्ट ओपोरिंग विद्यालय में केन्द्रीय सरकार ओपोरिंग प्रसिद्धरण कालिपुर के पंचपट को प्रकाशित करनी है, जो केन्द्रीय सरकार को 23-7-92 को प्राप्त हुआ था।

[मेरा एम-42012/66/99-ग्राही-शार (ही.डी.यू.)]
कैंसी बी. उणी, ड्रेस्क अधिकारी

New Delhi, the 27th July, 1992

S.O. 2170.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Chief Engineer Rajghat Bandh, Pariyojna Rajghat, Lalitpur and their workmen, which was received by the Central Government on 23-7-1992.

[No. L-42012/66/89-IR (DU)]
K.V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT PANDU NAGAR KANPUR

Industrial Dispute No. 273 of 1989

In the matter of dispute :

BETWEEN

Sri Shrawan Kumar Jain,
C/o Sri Kamal Kumar Chaudhary
General Secretary,
Rajghat Bandh Pariyojna
Karamchari Union,
Rajghat Lalitpur-284403.

AND

Chief Engineer,
Rajghat Bandh Pariyojna,
Rajghat Lalitpur.

AWARD

1. The Central Government, Ministry of Labour, vide its Notification No. L-42012/66/89-I.R. (D.U.) dated 31-10-89, has referred the following dispute for adjudication to this Tribunal :—

Whether the action of the management of Rajghat Bandh Pariyojna Rajghat District Lalitpur in terminating the services of Shri Shrawan Kumar Jain w.e.f. June 1986 is legal and justified ? If not to what relief the workman concerned is entitled ?

2. The case of the workman is that the Central Water Commission, Government of India, permanently set up a Board in the name of Betwa River Board for construction of a Dam and the said Board in 1978 started a project for construction of a Dam at Rajghat District Jhansi. According to him he was appointed against a permanent vacant post of Electric Helper on 1-5-83, but he was wrongly designated as Daily Rated Casual Labour (hereinafter referred to as D.R.C.L. for short). Because of his Trade Union Activity his services were terminated by the management w.e.f 24-6-86, without notice or without giving of notice pay and without payment of retrenchment compensation to him. He alleges that he had regularly served the management and had completed more than two years service and 240 days service preceding the date of his termination from service. He has also alleged that at the time of termination of his

services. He has also alleged that at the time of termination of his services persons junior to him were retained in service by the management. The workman/Union has, therefore, prayed for his reinstatement in service with full back wages and payment to him of salary of a regular employee.

3. The case is contested by the management. The management plead that Betwa River Board was established under Betwa River Board Act, 1976. The Central Government after holding consultation with the Government of Madhya Pradesh and Government of Uttar Pradesh appointed an Engineer known as Chief Engineer Rajghat Dam Project. According to the management the workman was engaged as DRCL in connection with the construction of work on dam on a daily wage of 13.15 paisa. The work of the Project is of a temporary nature and it is likely to be completed in the year 1992-1993. As such the provisions of section 25-FFF (2) apply to the case of the workman. The management do not admit that the services of the workman were ever terminated by the management. The fact that the workman himself left his casual employment after working on 23-6-86 for better occupation. From his new occupation he is earning an income of not less than about Rs. 200 per day.

4. The management have then raised certain legal pleas. The management have challenged the reference order on a number of grounds. Firstly, the management say that the Central Government is not the Appropriate Government; secondly, that the project which is still under construction is not an industry, thirdly that there does not exist any industrial dispute between the parties within the meaning of section 2 (k) of the Act read with section 2-A of the Act and that the reference order is bad for non joinder of Betwa River Board.

5. In support of his case the workman has examined himself and has relied on some documents. On the other hand, the management have not examined any witness in defence. The management simply filed some documents with the affidavit of Sri Gajendra Mohan Ex. Engineer but did not examine him. On 25-3-92, Sri V. K. Gupta, the authorised representative for the management moved an application on behalf of the management that the management did not want to file any affidavit evidence in support of his case and that the case be fixed for hearing arguments. I may state here that during the course of examination of workman Sri Gupta, got proved copies of Mustor Rolls filed by the management from the workman himself. These are documents No. 1 to 7 of the list of documents dated 19-5-91 of the management. Document No. 8 of this list is only a statement showing the periods and the number of actual working days of the workman during the said periods calculated from the mustor roll got proved by Sri Gupta from the workman during his cross examination.

6. From the mustor rolls which Sri Gupta got proved from the workman during his cross examination, it appears that the workman had worked for 205 days only during the period 1-6-85 to 23-6-85. From the mustor rolls it also appears that for 30 days work

done by the workman from 24-5-86 to 23-6-86, he was paid Rs. 394 only.

7. In his cross examination the workman has deposed that he was retrenched as a D.R.C.L. He has further deposed that on 24-6-86 when he went for duty he was not given duty. He denied the defence plea that he himself had abandoned the job. Then in his cross examination he has deposed that after about 6 months of the termination of his services he started running a bettle Shop. From the said shop he earned about Rs. 300/- or Rs. 400/- per month. In his cross examination he has admitted the fact that the Dam would be ready by 1992-93.

8. As said by me earlier the management have not led any evidence in support of their case. Thus there is no evidence from the side of the management that the Dam on which the workman was admittedly engaged as a DRCL would be completed in the year 1992-93. I have already said that the suggestion put to the workman by Sri Gupta during his cross examination in this regard was not admitted by the workman at all.

9. There is no dispute about the fact that 23-3-83 was the last date of the working of the workman. This last date is found mentioned in para 25 of the written statement. In the whole of the written statement, the management have not mentioned as to why the workman was initially engaged as DRCL. Not only that in the whole of the written statement details of the workman was initially engaged as DRCL. Not only On the other hand in para 2 of his claim statement, the workman has alleged that he was appointed on 1-5-83 as a Electric Helper, though described as a DRCL. He has also alleged that his services were terminated w.e.f. 24-6-86. In para 9 of the claim statement he has alleged that he had completed more than two years of service and 240 days service proceeding the date of his removal from service. With his affidavit the workman has filed the photocopy of a certificate dated 27-12-86 issued by Sri M. N. Saxena, Assistant Engineer, Rajghat Dam Project. The certificate shows that he had worked from May 1983 to June 1986. In his affidavit, however, he had put the date of his initial management as 5-3-83 which may be in all probability due to some clerical mistake. But this will not effect much the case of the workman. He has corroborated the case of his continuous working by means of his affidavit.

The management have also filed copies of muster rolls of the following period :—

1. 1-6-85 to 30-6-85—30 days.
2. 1-10-85 to 23-10-85—23 days.
3. 24-10-85 to 23-11-85—31 days.
4. 24-12-85 to 23-1-86—31 days.
5. 24-1-86 to 23-2-86—31 days.
6. 24-4-86 to 23-5-86—29 days.
7. 24-5-86 to 23-6-86—30 days.

The management have not filed muster rolls of the periods 1-7-85 to 30-9-85, 24-11-85 to 23-12-85 and 24-2-86 to 23-4-1986. Document no. 8 of the list of documents dt. 19-5-91, as I have already said, is a statement of working days of the workman on the basis of copies of muster rolls filed by the man-

agement. In order to show that during the above periods the workman had not worked at all, the management should have filed muster rolls of the said periods and got this fact proved from some witness. In the absence of it the document no. 8 cannot be accepted as true except for the period of working of the workman shown in it. Even no suggestion has been made by Sri Gupta to the workman in his cross examination that the workman had not worked continuously and that he had worked only intermittently. In the circumstances, in the absence of failure of the management to produce the primary evidence of the above periods the evidence given by the workman will have to be believed. I, therefore, hold that the workman had worked for 240 days during the period of 12 months preceding 24-6-86.

10. The next point to be examined in the case is whether the services of the workman were terminated or he had abandoned the job. The workman has denied that he had abandoned the job. On the other hand, there is no evidence from the side of the management on the plea set up in the written statement, that he had left the job. So even on this point, I believe the workman.

11. The workman has also alleged about the breach of the provisions of section 25G of the Act by the management. He has supported this plea by means of his affidavit in para 11 of his affidavit he has named some persons who were allowed to continue in service despite their being junior to him. There was no cross examination of the workman on this fact. Therefore, I believe the case of the workman even on this point.

12. It is not the case of the management that before terminating the services of the workman any notice pay was given to the workman. It is also not the case of the management that at the time of the termination of the services of the workman they paid even retrenchment compensation. Thus there was also breach of section 25-F of the Act on the part of the management.

13. Hence, I find that the order termination the services of the workman is neither legal nor justified. The workman as such is entitled to his reinstatement with full back wages but from the back wages so awarded the income which he has been making from the Betel Shop will have to be deducted. We have seen from the muster roll that for 30 days working during the period 24-5-84 to 23-6-84, he was paid Rs. 394/- only. Back wages will be calculated on the basis of daily wage of a DRCL paid by the management from time to time during the period during which the workman has been out of employment. From the amount so calculated, the amount calculated at the rate of Rs. 350 per month which the workman has been earning shall be deducted.

14. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई विल्सनी, 27 जुलाई, 1992

कांग्रेस 2171—ओष्ठोगिक विवाद अधिनियम, 1947 (1947 का 14) की आरा 17 के अनुमरण में, केन्द्रीय सरकार लीफ पोस्ट मास्टर जनरल, बाल विभाग, शीर्षक विभाग और उनके कार्यकारों के बीच, अनुबंध में निविल औष्ठोगिक

विवाद में अधिकारिक अधिकारण कोलाम के पचपट का प्रकाशित करते हैं, जो केन्द्रीय सरकार को 24-7-92 को प्राप्त हुआ था :

[सं. प्रम. 40012/22/90-प्राई आर (टोम्पू)
कॉलाम उणी, डेस्क अधिकारा]

New Delhi, the 27th July, 1992

S.O. 2176.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of Industrial Tribunal, Kollam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Chief Post Master General, Department of Posts, Thiruvananthapuram and their workmen, which was received by the Central Government on 24-7-92.

[No. L-40012/22/90-IR(DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, KOLLAM

(Dated, this the 13th day of July, 1992)

PRESENT :

SRI C. N. SASIDHARAN
INDUSTRIAL TRIBUNAL

IN

INDUSTRIAL DISPUTE NO. 142/90
BETWEEN

The Chief Post Master General, Department of Posts,
Kerala Circle, Thiruvananthapuram-695 033.
(Sri. Shaji Chellapan, Additional Standing Counsel)

AND

Sri. Gangappan Nair, Kadavara Putten Veedu,
Kandala P.O., (via) Kuvalassery, Pin 695 512
(By Sri. Neyyattinkara No. Mohanachandran,
Advocate, Trivandrum)

AWARD

The Government of India as per Order No. L-40012/22/90-IR(DU) dated 30-11-1990 have referred this Industrial Dispute for adjudication to this Tribunal.

The issue for adjudication is the following :

"Whether the action on the part of the Department of Posts in Terminating the services of Sri. V. Gangappan Nair as a cook attached to Postal Life Insurance Tiffin room w.e.f. 7-3-1988 is legal and justifiable? If not, to what relief the concerned workman is entitled to?".

2. The workman Sri. Gangappan Nair has stated in his claim statement that he have been appointed as cook in the PLI Tiffin Room (Tiffin Room for short) under the Post Master General Office ('PMG' for short) Trivandrum on December 1984 and thereafter

he got temporary appointment as cook with effect from 1-4-1986. While working there his services were terminated on 3-3-1988 without any reason. Though he has prayed before the secretary Tiffin Room and the Welfare Officer of the PMG office to reinstate him in service, no action is being taken. Thereafter he requested the PMG to reinstate him in service but the Welfare Officer has intimated him that there is no vacancy in the PMG Office canteen. According to this workman he has been terminated without any reasonable cause. He has no source of income and he has to look after a large family. The further case of the workman is that after termination authorities have appointed some other persons and that shows that there are vacancies. The claim is for reinstatement in service.

3. The management opposes the claim. It is pleaded that there is no privity of contract between the workman and postal Department that he has never been appointed by the Department. The Tiffin Room attached to the PLI section of the PMG Office was run by a committee of employees in that section and the Postal Department has no control over the administration of the Tiffin Room. On the request of the employees certain amounts were used to be disbursed considering the welfare of the employees. The management has not issued memo dated 3-3-1988. The Welfare Officer or the PMG was not in a position to acced to the request for recruitment and the department had no control over the Tiffin Room. It is also stated that the persons appointed in the co-operative canteen were nominees of the Employment Exchange and in the appointment the department had no control. The management denies the appointment of four other staff in the departmental canteen since the termination of the workman. The PMG has never ordered to retrench the workman or any other employees. Moreover this Tiffin Room is no more in existence. According to the management the workman is not entitled to any relief.

4. The workman examined himself as WW1 and Exts. W1 to W3 have been marked on his side. Asst. Superintendent, Office of the PMG was examined as MW1 on the side of the management.

5. Having set out the facts the questions fall for consideration are whether the workman was appointed by the PMG and whether his services were terminated as pleaded by him. Ext. W1 is the photocopy of the appointment order issued to him. Ext. W1 was issued by the Secretary, Tiffin Room and it is stated in W1 that the executive committee of the Tiffin Room has decided to appoint the workman. It is also evident from Ext. W1 that the appointment was temporary and on ad hoc basis. There is nothing in Ext. W1 to prove that the workman was appointed by PMG or as per the direction of the PMG. No evidence is also forthcoming to show that the workman was paid by the PMG at any point of time. There is no evidence on record to show that the Tiffin Room was under the control and supervision of PMG. The workman while giving evidence as WW1 also has not stated that he was appointed by PMG and paid salary by PMG. There are no evidence in this case to the effect that employer employee relationship existed between the workman and PMG. These circumstances lead to the irresistible conclusion

2. The dispute has been settled out of Court. A memorandum of settlement has been filed in Court. I have gone through the terms of settlement and I find them quite fair and reasonable. There is no reason why an award should not be passed on the basis of terms and conditions laid down in the memorandum of settlement. I accept it and pass an award accordingly. The memorandum of settlement shall form part of the award.

3. Let a copy of this award be sent to the Ministry as required under section 15 of the Industrial Disputes Act, 1947.

S. K. MITRA, Presiding Officer.

Reference Case No. 88 of 1991

Memorandum of Settlement between the management of Moti Jharna Stone Mines of M/s. Ottan Das & Co. Maharajpur and Secretary, Bihar Rajya Pathar Khadan Kraser Worker's Union Karyalaya Sahebganj, Pakur, Kshetriya Committee Sahebganj.

Management Representative,

1. Shri Samir Kumar Gupta,
Manager,
Moti Jharna Stone Mines,
Maharajpur,
of M/s. Ottan Das & Co.

1. Sri Jogender Pd. Singh,
Secretary,
Bihar Rajya Pathar Khadan
Kraser Worker's Union
Karyalaya Sahebganj,
Pakur Kshetriya Committee
Sahebganj.

Short recitals of the Case.

The concerned workman Shri Gobind Yadav was a workman of Moti Jharna Stone Mines, Maharajpur, of M/s. Ottan Das & Co. The workman absented from duty due to illness from 5th, October, 1990. However, the Union raised an Industrial dispute alleging that the management has stopped him from workman and the said dispute now has been referred to the Central Government Industrial Tribunal No. 1 at Dhanbad vide Government order No. L-29011/20/91-I.R. (Misc.) dated 25-9-91. However, it transpired that the concerned workman fell sick seriously and stopped coming for duty on and from 5-10-1990, the concerned workmen died due to illness on 10-2-1991. All the outstanding dues of the concerned workman have since been paid to his daughter Meena Yadav the only surviving heir of the deceased workman hence there is no industrial dispute existing now. Therefore the parties both the management and the Union have resolved the dispute on the terms and conditions as under :—

Terms

1. The Union accepts the fact that the concerned workman late Gobind Ram Yadav on his own stopped coming to duty due to his serious illness and the management did not stop him from work or terminated his services either on 5th October, 1990 or any time thereafter.

2. That, the said concerned workman is now dead there is no question of reinstating the concerned workman, and hence there is no industrial dispute existing now.

3. That, all the outstanding dues of the deceased workman have been paid to Meena Yadav the only surviving heir of late Gobind Ram Yadav in the presence of Shri Jogender Prasad Singh the Secretary of Bihar Rajya Pathar Khadan Kraser Worker's Union, and the Union accepts and acknowledges this fact.

4. That, the Union accepts that there is no dispute now existing and all disputes have been hereby resolved and the Union hereinafter will not raise any dispute in respect of any matter in respect of late Gobind Ram Yadav the deceased workman.

5. Both the parties the management and the Union will file this settlement before the Central Government Industrial Tribunal No. 1 at Dhanbad for giving an Award by the Tribunal in terms of this settlement.

(Shri Samir Kumar Gupta)
Representative of Management

Witnesses :—

1. (Sd.) Illegible.
2. Shaligram Mishra
Maharajpur (S.B.G.)

Union Representative
(Yogender Prasad Singh)
Secretary,
Bihar Rajya Pathar
Khadan Kraser Worker's
Union Karyalaya Sahebganj,
Pakur, Kshetriya
Committee Sahebganj.

Part of the Award.
Presiding Officer

Central Government Industrial Tribunal
Cum-Labour-Court (No. 1), Dhanbad.

नई दिल्ली, 31, जूलाई 1992

कांग्रेस 2172 :—कर्मचारी राज्य बीमा भवित्वितम्, 1948 (1948 का 34) की वारा-1 का उपचारा (3) द्वारा प्रवत्त भवित्वों का प्रवोग करते हुए, केन्द्रीय सरकार एवं द्वारा 1-9-92 को उस नारोग के रूप नियम करती है, जिसकी उस प्रवित्वितम् के अध्याय-4 वारा-44 और 45 के सिवाय जो पहले ही प्रवृत्त को जा चुकी है (और अध्याय-5 और 6) वारा-76 की उपचारा (11) और वारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त को जा चुकी है (के उपर्युक्त प्रवेष राज्य के विवरिति भेद में प्रवृत्त होने, भवति :—

“विजयवाडा की नगर पालिका सीमाओं के अन्तर्गत घाने वाले भेद उन दोषों के प्रतिक्रिया जहाँ उन प्रवद्वान पहले ही प्रवृत्त किये जा चुके हैं”।

[नंबरा एस-38013/16/92-एम एम 1]
जे ०१०४१, घबर सचिव

New Delhi, the 31st July, 1992

S.O. 2173.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 1st August, 1992 as the date on which the provisions of Chapter IV

(except sections 44 and 45 which have already been brought into force) and Chapters V and VI (except sub-section (1) of section 76 and sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Andhra Pradesh, namely :—

“The areas comprising of the Municipal limits of Vijaywada in addition to the areas in which the said provision of the Act have already been brought into force.”

[No. S-38013/16/92-SS.I]

J. P. SHUKLA, Under Secy.

नई दिल्ली, 3 अगस्त, 1992

का०आ० 2174:- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को भारा 17 के अनुसरण में, केन्द्रीय सरकार कलकता पोर्ट ट्रस्ट के प्रबन्धालय के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में भिविट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकता के पंचायत को प्रकाशित करता है, जो केन्द्रीय सरकार की 24-7-92 को प्राप्त हुआ था।

[सं. ए०-32011/3/91-आर०आर० (विविष्ट)]
श्री०एम० रेविंग, बैस्क प्रधिकारी

New Delhi, the 3rd August, 1992

S.O. 2174.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta, as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of Calcutta Port Trust and their workmen, which was received by the Central Government on the 24th July, 1992.

[No. L-32011/3/91-IR (Misc.)]
B. M. DAVID, Desk Officer.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 17 of 1991

PARTIES: Employers in relation to the management of Calcutta Port Trust

AND

Their workmen

PRESENT: Mr. Justice Manash Nath Roy ..
Presiding Officer.

APPEARANCE:

On behalf of management

Mr. G. Mukherjee, Personnel Officer.

On behalf of workmen

Mr. A. Bhattacharjee, General Secretary of the Union.

STATE: West Bengal.

INDUSTRY: Port.

AWARD

By Order No. L-32011/3/91-IR (Misc.) dated 17th June, 1991, the Govt. of India, Ministry of Labour referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Calcutta port Trust in refusing to record and correct the date of birth of Shri Akhanda Pratap Singh, Keyman under Senior Engineer (Rly. Station) in Chief Engineers Department of Calcutta Port Trust, Calcutta in his service record according to the Transfer Certificate issued by the Principal of Narendra Inter College Lal Pur, Faizabad (U.P.) is justified or not? If not to what relief the concerned workman is entitled to?”

2. Mr. Bhattacharjee appearing for the workman, who was also present in the Court and has filed an application stating that in the situation beyond his control, the workman is not in a position to continue with the case. As such, necessary leave was asked for, for allowing him to withdraw the case. After hearing the learned representatives, the case is disposed of and it may be treated as withdrawn.

3. There was a prayer made for directions on the Management to make quick payment of the settlement dues. I just have it on record and wish that in the circumstances of the case, the Management will see that payments are made at the earliest.

MANASH NATH ROY, Presiding Officer.

Dated, Calcutta, 22nd June, 1992.

